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SUPREME COURT OF THE UNITED STATES.

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JACOB THOMPSON, WILLIAM G. FORD, AND JOHN M. POWELL, Pl'ffs in Er.,

vs.

DRURY W. BOWMAN.

IN ERROR TO THE DISTRICT COURT OF THE U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

GIDEON, Printer

SUPREME COURT OF THE UNITED STATES.

No. 336.

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EXEMPLIFICATION.

D. W. BOWMAN
vs.
JACOB THOMPSON et al.

Pleas had at a District Court of the United States, for the Northern District of Mississippi, begun and held at the town of Pontotoc in and for said District, on the first Monday of June, A. D. 1859. Present the Honorable Samuel J. Gholson, Judge of said court.

Be it remembered, that on the 22d day of November, 1856, D. W. Bowman sued out of the office of the clerk of District Court of the United States, for the Northern District of Mississippi, his certain summons in the words and figures following, to wit:—

(*Summons.*)

United States of America, Northern District of Mississippi.

The President of the United States, to the Marshal of the Northern District of Mississippi, greeting:—

We command you, without delay, to summon Jacob Thompson, John M. Powell, William G. Ford, Richard E. Orne, and William Griffin and John Griffin, partners under the firm name of Griffin & Brother, citizens of said Northern District, that they be and appear before the District Court of the United States, to be held at the town of Pontotoc in and for the Northern District of Mississippi, on the first Monday of December next, to answer to Drury W. Bowman, a citizen of the State of New York, of a plea of trespass on the case upon promises to his damage twenty-two thousand five hundred dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the first Monday of June, A. D. 1856, and 80th year of the independence of the United States.

Issued the 22d day of November, 1856.

R. W. EDMONDSON, Clerk.

Upon which said summons is the following endorsement, to wit:—

This action is brought to recover of the defendants the sum of eleven thousand two hundred and fifty ($11,250 00), due plaintiff September, 1856, by said defendants, for commissions for selling

one hundred and fifty thousand acres of land, for said defendants. The amount of said sum of $11,250 00, and the interest thereon, is the sum actually demanded.

DOWD & HOUGHTON, for Pl'ff.

And at the issuance of said summons, plaintiff, by attorney, filed his declaration in the words and figures following, to wit:—

(*Plaintiff's Declaration.*)

United States of America, Northern District of Mississippi.

United States District Court at Pontotoc. December Term, 1856.

DRURY W. BOWMAN, Pl'ff,
vs.
JACOB THOMPSON et als., Def'ts.

And the said plaintiff, by attorney, complains of Jacob Thompson, John M. Powell, William G. Ford, and William Griffing and John Griffing, the defendants, in the custody of the marshal, &c., for that heretofore, to wit, at the said Northern District, the said defendants, on the 1st day of September, 1856, were indebted unto said plaintiff in the sum of $11,250^{00}, for the commissions of said plaintiff for selling lands, &c., the property of defendants, of the value of $112,500^{00}, at the request of said defendants, at the time aforesaid, by means whereof said defendants became liable to pay plaintiff said sum of $11,250^{00}, as per bill of particulars herewith filed, Exhibit A, and being so liable they, the said defendants, promised to pay the same to plaintiffs.

And the said plaintiff further complaining says, that at, to wit, at the said Northern District, at the time aforesaid, the said defendants are indebted unto plaintiff in the further sum of $11,250^{00} for plaintiff's services as commission merchant and broker, in and about the business of said defendants, at their request, before that time in the sale of lands, &c., being the property of said defendants, which said sale was made by plaintiff for said defendants, at the time aforesaid, to wit, the sale of 150,000 acres of land for the sum of $112,500^{00}, by means whereof the said defendants became liable to pay plaintiff's said sum of $11,250^{00}, and being so liable, they, the said defendants, promised to pay plaintiff's said sum of money; and the said plaintiff further avers, that at the time aforesaid, in the city of New York, the said defendants employed plaintiff to sell for them one hundred and fifty thousand acres of land, lying in the State aforesaid, at the price of seventy-five cents per acre, for which the said defendants agreed and promised to pay plaintiff ten per cent. on the amount of said sale, and plaintiff says that he did sell the said one hundred and fifty thousand acres of land belonging to defendants, at the price aforesaid, to one Leroy M. Wiley, for the sum of one hundred and twelve thousand dollars, five hundred dollars, on the day of September, 1856, according to said contract and

agreement, by means whereof the said defendants became liable to pay plaintiff the said sum of eleven thousand two hundred and fifty dollars, and being so liable they, the said defendants, promised to pay plaintiff the said sum of money; and the said plaintiff further avers, that said sums of money are still due and unpaid, and that the said defendants, although they have often been so requested have wholly failed and refused to pay the said sums of money, or any part thereof, to plaintiff's damage $22,500^{00}$, and therefore he brings his suit.

DOWD & HOUGHTON, for Pl'ff.

Order of court had in this cause at the December Term of this court, 1856, is in the words and figures following, to wit:—

(*Order of Court at December Term*, 1856.)

D. W. BOWMAN
vs.
JACOB THOMPSON et al.

Friday, December 5th, 1856, alias writ ordered and continued.

And at the said December Term, 1856, it was ordered that an alias writ issue in this cause, which is in the words and figures following, to wit:—

(*Alias Summons.*)

United States of America, Northern District of Mississippi, ss.

The President of the United States to the marshal of the Northern District of Mississippi, greeting:—

We command you, as heretofore, without delay to summon Jacob Thompson, John M. Powell, William G. Ford, Richard E. Orne, and William Griffin and John Griffin, partners, under the style of Griffin & Brother, citizens of said Northern District, that they be and appear before the District Court of the United States to be held at the town of Pontotoc, in and for the Northern District of Mississippi, on the first Monday of June next, to answer to Drury W. Bowman, a citizen of the State of New York, of a plea of trespass on the case upon promises, to the damage of said plaintiff twenty-two thousand dollars, &c., and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the Honorable Samuel J. Gholson, judge of the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the first Monday of December, A. D. 1856, and the 81st year of the independence of the United States.

Issued the 12th day of January, 1857.

R. W. EDMONDSON, Clerk.

Upon which said summons is the following endorsement, to wit:—

Action of assumpsit brought to recover of defendants the sum of eleven thousand two hundred and fifty dollars, due pl'ff, Sept. 1856, by said defendants, for commissions for selling one hundred and fifty thousand acres of land for said defendants. The am't of said sum of $11,250^{00}$, and the interest thereon, is the sum demanded in this suit. R. W. EDMONDSON, Clerk.

Upon which said summons the marshal made his return in the words and figures following, to wit:—

I hereby constitute and appoint J. H. Rahn my special deputy to execute and return the within writ.

Given under my hand and seal.

CHAS. R. JORDAN, [SEAL.]
May 13th, 1857. Marshal N. Dist. Miss.

Executed on Powell April 10th, 1857.
C. R. JORDAN, M'l.
By J. Q. RAYBURN, Dep'ty M'l.

Executed on Jacob Thompson May 16th, 1857.
CHAS. R. JORDAN, M'l.
By J. H. RAHN, Dept.

The other defendants not found, June 1st, 1857.
CHAS. R. JORDAN, M'l.
By J. Q. RAYBURN, Dep'ty M'l.

Order of court had in this cause at the December Term, 1857, is in the words and figures following, to wit:—

(*Order of Court at December Term*, 1857.)

DRURY W. BOWMAN
vs.
JACOB THOMPSON et als.

Wednesday, December 9th, 1857. This day came the parties by their attorneys, and on motion of plaintiff this cause was continued until the next term of this court.

Order of court had in this cause at June Term, 1858, is in the words and figures following, to wit:—

(*Order of Court, at June Term*, 1858.)

DRURY W. BOWMAN
vs.
JACOB THOMPSON et al.

Monday, June 7th, A. D. 1858. It is ordered by the court that the plaintiff in this cause have leave to file an amended declaration in said causes.

And afterwards, to wit, on the 7th day of June, 1858, plaintiff, by

attorney, filed his certain amended declaration in the words and figures following, to wit:—

(*Amended Declaration.*)

United States of America, Northern District of Mississippi. District Court, June Term, 1858.

Drury W. Bowman, a citizen of the State of New York, by attorney, complains of Jacob Thompson, John M. Powell, W. G. Ford, John Griffin, and Wm. Griffin, partners in trade, who are citizens of the State of Mississippi, residing in the Northern District thereof, of a plea of trespass on the case upon promises, for that, whereas, heretofore, viz., on the day of , 1856, the said defendants, being seized and possessed of certain lands in the State of Mississippi, and in that part of said State known as the Mississippi Bottom, and desirous of procuring a purchaser for the said lands, requested the said plaintiff to introduce the said defendants to a person or persons who would purchase said lands, and in consideration that the said plaintiff would introduce them to a purchaser of said lands, undertook and faithfully promised, in consideration thereof, to pay the plaintiff ten per centum upon the amount of money arising from the proceeds of the sales of said lands to purchasers as aforesaid, and the plaintiff in fact says that he did introduce to said defendants a certain person, viz. one William G. Lane, who, with L. M. Wiley and others, purchased said lands from the said defendants on the 4th of August, 1856, in the District aforesaid, for the sum of one hundred and eleven thousand nine hundred and sixteen $\frac{66}{100}$ dollars, by means whereof the said defendants became liable to pay said plaintiff the said sum of ten per centum upon the aforesaid sum of one hundred and eleven thousand nine hundred and sixteen $\frac{66}{100}$ dollars, and in consideration thereof undertook and promised to pay the said plaintiff the said sum of money when they, the said defendants, should be thereunto afterwards requested.

And whereas, also, afterwards, viz., on the day and year last aforesaid, the said defendants being seized of certain lands in the State of Mississippi, in that part thereof known as the Mississippi Bottom, and being desirous of procuring a purchaser for said lands, requested this plaintiff to find a purchaser for said lands, and promised the said plaintiff to pay him ten per centum upon the amount of sales of said lands to said purchaser, and the plaintiff avers that he did find a purchaser for said lands, who, with others, purchased said lands from the said defendants on the 4th of August, 1856, in the District aforesaid, for the sum of one hundred and eleven thousand nine hundred and sixteen $\frac{66}{100}$ dollars, by means whereof the said defendants became liable to pay the said plaintiff the said sum of money, viz. 10 per centum upon the aforesaid sum of one hundred and eleven thousand nine hundred and sixteen $\frac{66}{100}$ dollars, and being so liable, they, the said defendants, in consideration thereof afterwards, viz., on the day of , at the District aforesaid, undertook and faithfully

promised the said plaintiff to pay the said sum of money when they, the said defendants, should thereunto afterwards requested.

Nevertheless, the said plaintiff avers that the said defendants, though often requested, have not paid the said plaintiff the said several sums of money or any part thereof, but to do the same have hitherto altogether refused, and still do refuse to the plaintiff's damage dollars. Hence he sues, &c.

DOWD & HOUGHTON, Attorneys for plaintiff.

And at the said June Term, 1857, defendants, by attorney, filed their plea in the words and figures following, to wit:—

(*Defendants' Plea.*)

United States District Court, for the Northern District of Miss. June Term, 1857.

JACOB THOMPSON et al.
ads.
DRURY W. BOWMAN.

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise as the plaintiff in his declaration hath alleged, and of this they put themselves upon the country.

ALCORN, WATSON, CRAFT & BENTON,
Attorneys for defendants.

And plaintiffs do the like.

DOWD & HOUGHTON, for Plaintiff.

Order of court had at June Term, 1858, is in the words and figures following, to wit:—

(*Order of Court had at June Term*, 1858.)

DRURY W. BOWMAN
vs.
JACOB THOMPSON et al.

Wednesday, June 9th, A. D. 1858. This day came the parties, by attorneys, and thereupon came a jury of good and lawful men, to wit—Jury No. 2 being Alx. C. McEwen and eleven others, tried, sworn, and empanelled well and truly to try the issue joined between the parties, who, upon their oaths for their verdict say they find the issue in favor of the defendants. It is therefore considered by the court that the defendants recover of the plaintiff all cost in this behalf expended.

The defendants tendered their bill of exceptions signed, sealed, and ordered to be made a part of the record, which is in the words and figures following, to wit:—

(*Defendants' 1st Bill of Exceptions.*)

District Court of the United States, for the Northern District of the State of Mississippi.

BOWMAN
vs.
JOHN M. POWELL & Others.

June Term, 1858. Be it remembered, that this cause came on to be heard on the pleadings, &c., and a jury having been duly empanelled and sworn, the plaintiff, to support the issue on his part, introduced the deposition of Wm. G. Lane, in the words and figures following, to wit:—

(*Deposition of Wm. G. Lane.*)

United States of America, Southern District of New York, city, county, and State of New York, ss.

Be it remembered, that on the 11th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and an act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at No. 74 Wall street, in the city of New York, in the said Southern District of New York, in the State aforesaid, William G. Lane, as a witness, to testify, and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Northern District of Mississippi, wherein Drury W. Bowman is plaintiff, and Jacob Thompson and others are defendants, and the said William G. Lane being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William G. Lane, and he did thereupon depose, testify, and say as follows, viz:—

I reside in the city of New York, and am engaged in the mercantile business in said city.

1st. Q. Do you know the parties to this action, or any of them, and which of them?

A. I know the plaintiff, and one Mr. Powell, but I don't know his

first name, who, I believe, is one of the defendants; the other defendants I do not know.

2d Q. Do you know Leroy M. Wiley, of this city?

A. I do know him.

3d Q. Do you know of a purchaser of any lands in Mississippi, of Mr. Ford, or Mr. Powell by Mr. Wiley?

(Objected to by Mr. Butler, for defendants.)

A. I know of a purchase made; I have seen the deed from William G. Ford to Leroy M. Wiley, of lands in Mississippi.

4th Q. Do you know anything about the negotiations for that purchase?

A. Yes.

5th Q. Do you know by whom the subject was introduced to Mr. Wiley?

(Objected to by deft's' counsel.)

A. I was introduced by Mr. Bowman to Mr. Powell, and afterwards Mr. Powell was introduced to Mr. Wiley, by whom, I cannot say; it was either by myself or Mr. Bowman.

6th Q. Were any maps produced, in your presence, to Mr. Wiley, relating to the lands of which you have spoken?

A. There was.

7th Q. By whom were they produced?

A. By either Mr. Bowman or Mr. Powell, can't say which; but think by Mr. Bowman; that is my present recollection.

8th Q. Were any such maps produced to you, before they were produced to Mr. Wiley?

(Objected to by deft's' counsel.)

A. I am inclined to think the same map was produced to me before it was produced to Mr. Wiley.

9th Q. Who first produced that to you?

A. My recollection is, that it was Bowman; but I am not positive as to that.

10th Q. Had you ever seen that map before you was introduced to Mr. Powell?

A. My recollection is, that Mr. Bowman showed me the map before I was introduced to Mr. Powell.

11th. Q. Who first introduced to you the subject of the purchase of those lands?

A. Mr. Bowman.

12th Q. Was or was not that map produced by Mr. Bowman, at your request?

A. I am inclined to think it was; but I am not positive.

13th Q. State, as near as you can, about the time of the first interview on the subject, between you and Mr. Bowman.

A. I think it was in July, 1856, or in the latter part of June.

14th. Q. Do you know where those lands were located?

A. They lay principally in Washington, Issaquena, Holmes, and

Yazoo counties; there were about one hundred and fifty thousand acres.

15th Q. Do you know at what price they were sold to Mr. Wiley?

A. Seventy-five cents per acre.

16th Q. Were you interested in that purchase?

A. Yes, sir.

17th Q. Why was the deed taken in the name of Mr. Wiley?

A. By agreement between us.

Cross-examination by Mr. Butler, on the part of Defendants.

Q. Who did you or Mr. Wiley negotiate with, for the purchase of the lands you have spoken of?

A. It was Mr. Powell I have spoken of.

Q. Was there much negotiation between you and him, or between Mr. Wiley and him, as to the price of the land?

A. Yes; we were negotiating, extending during a week, as to the price principally.

Q. Did anybody else take part in that negotiation, on behalf of the seller, besides Powell; and if so, whom?

A. I think there was a person who took part in the negotiations with Mr. Wiley and Mr. Powell, by the name of Daniel Low; no one else that I know of.

Q. Did, so far as you know, Mr. Bowman have anything to do with the sale, except introducing Mr. Powell?

A. Not that I am aware of.

Q. Was not the price originally asked for the property much greater than that which was paid for it?

A. It was.

Q. Did Mr. Bowman ever make any effort to sell the property to you?

A. I think he did; he appeared anxious at the time he introduced Mr. Powell, that Mr. Wiley should purchase it.

Q. At what price?

A. I am not positive now, but I think one dollar, or one dollar and a quarter per acre.

Q. No bargain was ever made with Mr. Bowman in the matter?

A. No, sir.

Re-direct Examination.

Q. Did Mr. Bowman ever name a price for the property?

A. I can't say whether he did or not, that is, any positive price.

Q. Had you ever seen Mr. Powell on the subject of the purchase of those lands before he was introduced by Mr. Bowman?

A. I had not.

Q. Had Mr. Wiley, to your knowledge?

A. To my knowledge he had not. WM. G. LANE.

Sworn to before me, this 4th day of Nov'r, 1857.

CHARLES N. NEWTON,
U. S. Com., No. 74 Wall St., N. Y.

United States of America, Southern District of New York, ss.

I, Charles W. Newton, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress entitled, "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness' testimony material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial of the above entitled cause.

I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and served on the Messrs. Butler, Everets, and Southmayd, in the city of New York, who acts as counsel for defendant, in said city, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the (11) eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Mr. Butler, one of the members of said firm of Butler, Everets, & Southmayd, as counsel for defendants, and by John S. Woodward, Esqr., for plaintiff, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the deposition was by me reduced to writing in the presence of the witnesses and from such statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand, by mail, to the court for which the same was taken. And I do further certify, that I am not counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-first. CHAS. W. NEWTON,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Plaintiff then read in evidence the testimony of Jas. H. Anderson in the words and figures following, to wit:—

(*Testimony of Jas. H. Anderson.*)

D. W. BOWMAN
vs.
JACOB THOMPSON et al.

U. S. District Court at Pontotoc, June term, 1858.

In the month of August, 1856, I was present at a conversation between D. W. Bowman, the defendant in this cause, and John M. Powell, which conversation took place in the Astor House, in the city of New York. I understood from previous conversations with Mr. Powell, that he was then in the city of New York for the purpose of selling certain lands in the Mississippi Bottom, which belonged jointly to himself, Jacob Thompson, and Ford. In the conversation between Bowman and Powell first alluded to, Bowman asked Powell whether he (Powell) had not promised to pay him (Bowman) ten per cent. on the amount of sales of certain lands, if he (Bowman) would introduce him (Powell) to a purchaser, or would find a purchaser for the lands. I am not certain whether the expression used was "introduce him to a purchaser," or "find a purchaser" for the lands. In reply, Powell said that he did so promise. I recollect to have heard something to the effect that if the lands brought a certain price, that then the commissions to Bowman were to be paid, and that if they did not realize this certain amount, then no commissions were to be allowed. I don't recollect what that *certain amount* was, nor do I recollect whether it was in the conversation above alluded to. I heard it in some subsequent or anterior conversation, nor do I remember that both parties were present when I heard this conversation mentioned in reference to the payment of the commissions. I will further state, that I was in New York with Mr. Powell about a month previous to the conversation at the Astor House. Mr. Powell had been there a month or six weeks before I arrived, trying to sell the lands, as I learned from him, but up to that time had not succeeded in doing so. J. H. ANDERSON.

Plaintiff then read as evidence before the jury a letter admitted to be in the handwriting of the defendant, Powell, in the words and figures following, to wit:—

(*Letter from Powell to Bowman.*)

Helena, 26th August, 1856.

Dear Bowman: I arrived home some days since, and found my affairs all going on finely. I have a fine crop both of corn and cotton, and the country quite healthy. * * * * As to the land matter of the Company, we have not met, and I cannot now say when we will. I stated the case to Mr. Ford, in relation to the

commissions that I thought you was entitled to, and he agreed with me that you ought to have a commission, so we will settle that matter when you come south this winter. Bowman, by the Gods that made Moses, I wish you well, for I will never forget your kind treatment to me while in New York. You are worth your wait in gold, when it comes to being a clever man. Give my love to Sellers and Mc, and say to them I have not forgotten them; where is Jim Anderson, and when is he coming home? * * * *

I want you to receive the kind wishes of a true friend, and may you always live. Let me hear from you. If Jim Anderson is there, give him love, and also Watson.

Yours with high respect,

JNO. M. POWELL.

The foregoing was all the evidence introduced by the plaintiff.

(*Testimony of Orr.*)

Defendants then introduced as a witness before the jury, Orr, who being first duly sworn, proved—

I reached New York on the 15th June; left 15th July, 1856; roomed with Powell; I heard frequent conversations between Powell and Bowman and others, on the subject of the sale of the land; there was a minimum fixed by Powell, Thompson & Ford at 80 or 90 cents per acre, less than 80 was not entertained. Powell proposed to Bowman and others that if they could sell at a price above the minimum the excess would be equally divided between Powell and the person affecting the sale. He never in my presence proposed to give a per cent. to any person inducing the sale. Our social intercourse was constant and frequent with Bowman while I remained in New York.

The above, I believe, embodies my statement. ORR.

Here the testimony closed, and the court having charged the jury, which charge no exceptions was taken, the jury retired and subsequently returned into court and rendered a verdict for the defendant; and thereupon the plaintiff made in the cause the following motion:—

D. W. BOWMAN
vs.
JACOB THOMPSON & others.

The plaintiff in this cause moves the court to set aside the verdict and judgment rendered in this cause, and to grant a new trial. 1. Because the jury disregarded the instructions of the court. 2. Because the jury disregarded the evidence for the plaintiff and found their verdict against the proof in the cause. 3. For other reasons apparent from the record.

DOWD,
For motion.

Which motion, on consideration and argument of counsel, was sustained by the court, and the said verdict was set aside and a new

trial granted, to which opinion and judgment of the court the defendant at the time excepted, and to save the benefit of said exception, tendered this his bill of exceptions, and prayed that the same might be signed and sealed by the court, and be made a part of the record of the cause, which is accordingly done.

S. J. GHOLSON. [SEAL.]

Order of court had in this cause at the June Term, 1858, is in the words and figures following, to wit:—

(*Order of Court at June Term*, '58.)

D. W. BOWMAN
vs.
JACOB THOMPSON et al.

Friday, June 11, A. D. 1858. This day came on to be heard plaintiff's motion to set aside the verdict and grant a new trial in this cause, which was heard by the court, and ordered that the verdict in said cause be set aside and a new trial granted therein, to which the def'ts excepted.

Order of court had in this cause at the special January term, 1859, is in the words and figures following, to wit:—

(*Order of Court at Special Jan'y Term*, 1859.)

HENRY W. BOWMAN
vs.
JACOB THOMPSON et al.

Monday, Jan'y 10th, A. D. 1859, came the parties by att'ys, and continued this cause by consent.

(*Defendants' 2d Bill of Exceptions.*)

Afterwards, to wit, on the day of June, 1859, being a day of the said June term of said court, the defendants tendered another bill of exceptions to the ruling of the court, which was signed and sealed by the court, and ordered to be made a part of the record in this cause, and is in the words and figures following, to wit:—

United States of America, Northern District of Mississippi, District Court at Pontotoc, June Term, 1859.

HENRY W. BOWMAN
vs.
JACOB THOMPSON, JOHN M. POWELL & others.

Be it remembered, that on this the 7th day of June, 1859, being a day of the regular June term, 1859, of said court, the said defendant Jacob Thompson, appeared by his attorney Wm. F. Stearns, and renewed the application which was made at the January special term, 1859, of said court, for leave to file a plea in the words and figures following, to wit:—

United States of America, Northern District of Mississippi, District Court at Pontotoc, December Term, 1858.

D. W. BOWMAN
vs.
JOHN M. POWELL, JACOB THOMPSON et al.

And the said defendant, Jacob Thompson, by attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he, the said defendant, puts himself upon the country.

W. F. STEARNS, Atto. for Def't.

United States of America, District of Columbia, City of Washington.

Before me, John A. Campbell, Associate Justice of the Supreme Court of the United States, personally appeared Jacob Thompson, who being duly sworn, made oath that the foregoing plea is true in substance and in fact, because he saith that he, affiant, is not and never was a partner trading in lands with his co-defendants in the above stated cause, or with any or either of them; he holds some lands as a tenant in common with them, but is not their partner.

J. THOMPSON.

Sworn to and subscribed before me this 11th day of November, 1858.

JOHN A. CAMPBELL,
Associate Justice of the Sup. Court of the U. S.

Which said plea so sworn to as aforesaid, bears the following endorsement, to wit:—

Placed on file with the papers in this cause, by order of court, for further consideration, Jan'y 12, 1859.

R. W. EDMONDSON, Clerk.

And in support of his said application for leave to file the said plea in said cause, the said defendant, by his said attorney, presented and read to the court the same affidavit of the said defendant, upon which the original application was made, on the 12th day of January, 1859, for leave to file said plea, which said affidavit is in the words and figures following, to wit:—

D. W. BOWMAN
vs.
JOHN M. POWELL, JACOB THOMPSON et al.

On the law side of the District Court of the United States for the Northern District of Mississippi, at Pontotoc.

Jacob Thompson, one of the defendants in the above stated cause, makes oath that he left his residence in Lafayette County, Mississippi, in the month of March, 1857, and has ever since that time been a

resident of Washington City, in the District of Columbia, that his first subsequent visit to Mississippi was made in July, 1858, and was but of a few days' duration; that during that visit he heard for the first time that he had been sued by the plaintiff in the cause above stated; that he (affiant) was never personally served with process in said cause, nor was he ever informed, until July last, that such a suit was pending against him, nor had he before that time authorized any attorney to appear for him, or authorized any other person to employ an attorney to appear for him in said suit, and furthermore, that he is advised and believes, that he has a full and complete defence to the said action, of which he can only avail himself under an amendment of the pleadings; which defence arises out of the fact, which affiant avers to be true, that he is not and never was a partner trading in lands with his co-defendants, or any or either of them as is falsely alleged in the plaintiff's declaration in that behalf, but owned and undivided definite interest in certain lands of which his co-defendants were tenants in common, but not partners.

J. THOMPSON.

United States of America, District of Columbia, Washington City.

Before me, John A. Campbell, Associate Justice of the Supreme Court of the United States, personally appeared Jacob Thompson, who is known to me, and who makes oath and saith that the matters and things set forth in the foregoing statement are true to the best of his knowledge, remembrance, information, and belief.

J. THOMPSON.

Sworn to and subscribed before me, 11th day of November, 1858.

JOHN A. CAMPBELL,
Associate Justice of the Supreme Court of U. S.

Which said application, supported by the said affidavit for leave to file the said plea, was opposed by the counsel for the plaintiff, upon these grounds: 1st. That the Special Deputy Marshal's return of service of process upon the defendant Thompson, was conclusive.

2d. That the plea filed for the defendant Thompson, by Messrs. Alcorn, Watson, Craft & Burton, precluded him from questioning their authority, after a trial of the cause to appear for him. 3d. That the defendant Thompson had been guilty of gross negligence in so long delaying his application for leave to file said plea; and 4th. That the plea proposed to be filed did not disclose meritorious defence; and the court, after argument heard thereon, sustained the said objections of the counsel for the plaintiff and refused to grant the said application to file the said plea, to which said opinion and decision of the court sustaining the said objections and refusing to grant him leave to file the said plea, the said defendant Thompson, excepted at the time, and tendered this his bill of exceptions, thereto praying that the same might be signed and sealed by the court, and ordered to be made a part of the record in this cause, and the same

is now and hereby done accordingly, by the Honorable Samuel J. Gholson, Judge of said court, on the 7th day of June, 1859.

S. J. GHOLSON. [SEAL.]

Afterwards, to wit, on the 8th day of June, 1859, being a day of the said June Term of said court, the defendants tendered another bill of exceptions to the ruling of the court, which was signed and sealed by the court and ordered to be made a part of the record in this cause, and is in the words and figures following, to wit:—

(*Defendants' 3d Bill of Exceptions.*)

United States of America, Northern District of Mississippi.

District Court at Pontotoc, June Term, 1859.

DRURY W. BOWMAN
vs.
JACOB THOMPSON, WILLIAM G. FORD, and JOHN M. POWELL.

Be it remembered, that this cause came to be tried before the Hon. Samuel J. Gholson, Presiding Judge of said court on the 8th day of June, 1859, and that after the pleadings in the cause had been read to the jury, the plaintiff to maintain on his part the issue joined in the premises, offered to prove by the testimony of James H. Anderson, a witness who was produced for that purpose, that it was admitted by the defendant Powell, after the lands belonging to the defendants, in respect of which the commissions sued for in this cause are claimed, had all been sold, that he, said Powell, had agreed prior to said sale, to pay the plaintiff ten per cent. upon the amount of the proceeds of the sale of said lands, if he, the plaintiff, would find or introduce a purchaser for said lands; to the introduction of which testimony, the defendant Thompson, by his counsel, objected, upon the ground that the sale of all of the lands of the defendants operated as a dissolution of the partnership between the defendants, and that after such dissolution it was not competent for the defendant Powell to make admissions, touching the previous transactions of the firm, whereby his former partners might be charged with a liability, but the court overruled the said objection and permitted the said witness, Anderson, to testify in regard to said admissions of the defendant Powell, in order to fix a liability upon the defendant Thompson; to which opinion and decision of the court overruling the said objection and permitting the said witness to testify as aforesaid, the defendant Thompson, by his counsel, excepted at the time, and tendered this his bill of exceptions, praying that the same might be signed and sealed by the court and ordered to be made a part of the record in this cause, and the same is now and hereby done accordingly. S. J. GHOLSON. [SEAL.]

Afterwards, to wit, on the 8th day of June, 1859, being a day of

the said June Term of said court, the defendants tendered another bill of exceptions to the ruling of the court, which was signed and sealed by the court and ordered to be made a part of the record in this cause, and is in the words and figures following, to wit:—

(*Defendants' 4th Bill of Exceptions.*)

United States of America, Northern District of Mississippi.

District Court at Pontotoc, June Term, 1859.

DRURY W. BOWMAN
vs.
JACOB THOMPSON, WILLIAM G. FORD, and JOHN M. POWELL.

Be it remembered, that this cause came on to be tried before the Hon. Samuel J. Gholson, Presiding Judge of said court, on the 8th day of June, 1859, and that, during the progress of the cause, the plaintiff, in order to maintain on his part the issue joined in the premises, offered to read to the jury as evidence, the deposition of William G. Lane, in the words and figures following, to wit:—

United States of America, Southern District of New York, City, County, and State of New York, ss.

Be it remembered, that on this 11th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," held March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office at No. 74 Wall Street, in the city of New York, in the said Southern District of New York, in the State aforesaid, William G. Lane as a witness, to testify and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Northern District of Mississippi, wherein Drury W. Bowman is plaintiff and Jacob Thompson and others are defendants. And the said William G. Lane being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William G. Lane, and he did thereupon testify and say as follows, viz:—

(*Deposition of Wm. G. Lane.*)

I reside in the city of New York, and am engaged in the mercantile business.

1st Q. Do you know the parties to this action or any of them and which of them?

A. I know the plaintiff and one Mr. Powell, but I don't know his first name, who I believe is one of the defendants, the other defendants I don't know.

2d Q. Do you know Leroy M. Wiley of this city?

A. I do know him.

3d Q. Do you know of a purchase of any land in Mississippi of Mr. Ford and Mr. Powell, by Mr. Wiley?

(Objected to by Mr. Butler, for defendants.)

A. I know of a purchase made; I have seen the deed from William G. Ford to Leroy M. Wiley, of lands in Mississippi.

4th Q. Do you know anything about the negotiations for that purpose?

A. Yes.

5th Q. Do you know by whom the subject was introduced to Mr. Wiley?

(Objected to by defendants' counsel.)

A. I was introduced by Mr. Bowman to Mr. Powell, and afterwards Mr. Powell was introduced to Mr. Wiley, by whom I cannot say, it was either by myself or Mr. Bowman.

6th Q. Were any maps produced in your presence to Mr. Wiley relating to the lands of which you have spoken?

A. There was.

7th Q. By whom were they produced?

A. By Mr. Bowman or Mr. Powell, can't say which, but think by Mr. Bowman, that is my present recollection.

8th Q. Were any such maps produced to you before they were produced to Mr. Wiley?

(Objected to by def'ts' counsel.)

A. I am inclined to think the same map was produced to me before it was produced to Mr. Wiley.

9th Q. Who first produced that to you?

A. My recollection is that it was Mr. Bowman, but I am not positive as to that.

10th Q. Had you ever seen that map before you was introduced to Mr. Powell?

A. My recollection is that Mr. Bowman showed me the map before I was introduced to Mr. Powell.

11th Q. Who first introduced to you the subject of the purchase of those lands?

A. Mr. Bowman.

12th Q. Was or was not that map produced by Mr. Bowman at your request?

A. I am inclined to think it was, but I am not positive.

13th Q. State as near as you can about the time of the first interview on the subject between you and Mr. Bowman.

A. I think it was in July, 1856, or in the latter part of June.

14th Q. Do you know where those lands were located?

A. They lay principally in Washington, Issaquena, Holmes, and Yazoo Counties; there were about one hundred and fifty thousand acres.

15th Q. Do you know at what price they were sold to Mr. Wiley?

A. Seventy-five cents per acre.

16th Q. Were you interested in that purchase?

A. Yes, sir.

17th Q. Why was the deed taken in the name of Mr. Wiley?

A. By agreement between us.

Cross-examined by Mr. Butler on the part of the Defendants.

Q. Who did you or Mr. Wiley negotiate with for the purchase of the lands you have spoken of?

A. It was Mr. Powell I have spoken of.

Q. Was there much negotiation between you and him or between Mr. Wiley and him as to the price of the lands?

A. Yes, we were negotiating extending during a week as to the price principally.

Q. Did anybody else take part in that negotiation on behalf of the seller besides Mr. Powell? If so, whom?

A. I think there was a person who took part in the negotiation with Mr. Wiley and Powell, by the name of Daniel Low. No one else that I know of.

Q. Did, so far as you know, Mr. Bowman have anything to do with the sale except introducing Mr. Powell?

A. Not that I am aware of.

Q. Was not the price originally asked for the property much greater than that which was paid for it?

A. It was.

Q. Did Mr. Bowman ever make any efforts to sell the property to you?

A. I think he did; he appeared anxious at the time he introduced Mr. Powell, that Mr. Wiley should purchase it.

Q. At what price?

A. I am not positive now; but I think one dollar or one dollar and a quarter per acre.

Q. No bargain was ever made with Mr. Bowman in the matter?

A. No, sir.

Re-direct Examination.

Q. Did Mr. Bowman ever name a price for the property?

A. I cannot say whether he did or not; that is, any positive price.

Q. Had you ever seen Mr. Powell on the subject of the purchase of the lands, before he was introduced by Mr. Bowman ?

A. I had not.

Q. Had Mr. Wiley to your knowledge ?

A. To my knowledge, he had not. WM. G. LANE.

Sworn to before me, this 11th day of Nov. 1857.

CHAS. W. NEWTON, U. S. C.,
No. 74 Wall St., N. Y.

United States of America, Southern District of New York, ss.

I, Charles W. Newton, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 15th, 1817 ; and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the within testimony, material and necessary, in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial of the above entitled cause. I further certify, that a notification of the time and place of taking the said deposition signed by me, was made out and served on the Messrs. Butler, Everts, and Southmayd, in the city of New York, who acted as counsel for the defendants in said city, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit. I further certify, that on the (11th) eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Mr. Butler, one of the members of said firm of Butler, Evarts & Southmayd, as counsel for defendant, and by John S. Woodward, Esq'r, for plaintiff, and by the witness, who was of sound mind and lawful age ; and the witness was by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness ; and from such statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of transmitting the same with my own hand, by mail, to the court for which the same was taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-first. CHAS. W. NEWTON,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

And thereupon, the defendants, by their counsel, objected to the introduction, as evidence in the cause, of the answers of said witness to the 6th, 7th, 8th, 9th, 10th, and 12th questions propounded by the plaintiff, upon the direct examination of said witness, upon the ground that the said answers relating to certain maps, did not tend to support the issue joined between the parties; and the defendants, by their counsel, also at the same time, objected to the introduction as evidence, in the cause of the answers of said witness to the 16th and 17th questions propounded by the plaintiff upon the direct examination of said witness, upon the ground that the character and amount of the interest of said witness, in the purchase spoken of by him, were not disclosed by him; nor when, nor how, nor from whom he acquired it; and also, because the said interest, if it existed at all, ought to be proved by written evidence, and that parol evidence was not competent to prove the same, but the court overruled the said objection, and permitted the whole of the said answers of the said witness to be read to the jury as evidence, to which said opinion and decision of the court overruling the said objections, and permitting the said answers to be read in evidence, the defendant, by their counsel, excepted at the time, and tendered this their bill of exceptions, praying that the same might be signed and sealed by the court, and ordered to be made a part of the record in the cause; and the same is now and hereby done accordingly.

S. J. GHOLSON. [SEAL.]

Afterwards, to wit, on the 8th day of June, 1859, being a day of the said June term of said court, the defendants tendered another bill of exceptions to the ruling of the court, which was signed and sealed by the court, and ordered to be made a part of the record in this cause, and is in the words and figures following, to wit:—

(*Defendants' 5th Bill of Exceptions.*)

United States of America, Northern District of Mississippi. District Court at Pontotoc, June Term, 1859.

DRURY W. BOWMAN
vs.
JACOB THOMPSON, WILLIAM G. FORD, and JOHN M. POWELL.

Be it remembered, that this cause came on to be tried before the

Honorable Samuel J. Gholson, Presiding Judge of said court, on the 8th and 9th days of June, 1859; and that during the progress of the cause, the plaintiff, in order to maintain, on his part, the issue joined in the premises, proved by James H. Anderson, that he, said Anderson, on or about the 12th of August, 1856, went, at the request of the plaintiff, to the room of the defendant Powell, at the Astor House, in the city of New York, where the plaintiff and said Powell conversed for an hour or more; that during that conversation, the plaintiff asked said Powell, if he, said Powell, had not agreed to pay him, the plaintiff, ten per cent. commission upon the proceeds of the sale of the lands of the defendants, if he, the plaintiff, would find, or would introduce (the witness did not remember which), a purchaser for the lands; to which said Powell answered, that he did so promise; upon his cross-examination, the said witness testified that he could not recollect all the conversation that occurred between the plaintiff and said Powell, during their Astor House interview, or anything else, except what he had stated on the subject of the sale of said lands; that he had heard various conversations, at different times, between the plaintiff and said Powell, in relation to the sale of said lands, and had understood that the plaintiff was only to be entitled to a commission, in the event that the lands brought a certain price, the amount of which the witness could not recollect; but the witness was unable to state whether this understanding was derived from statements made by either of the parties, when both of them were present; nor could he recollect that the fact, that the commission was only to be paid upon a contingency, was mentioned in the course of the said conversation between the parties at Powell's room, at the Astor House, on the 12th of August, 1856; nor could he say, that the said fact was not then mentioned; whereupon, all the said testimony of said witness, so brought out upon his cross-examination as aforesaid, was objected to by the counsel for plaintiff, and wholly excluded from the jury by the court; to which opinion and decision of the court, sustaining said objection and excluding said testimony from the jury, the defendants, by their counsel, excepted at the time, and tendered this their bill of exceptions, praying that the same might be signed and sealed by the court, and ordered to be made a part of the record in this cause, and the same is now and hereby done accordingly.

S. J. GHOLSON. [SEAL.]

Plaintiff then read to the jury as evidence, in addition to the testimony of Anderson admitted by the court as set out in the foregoing bill of exceptions, and to which reference is here made as a part of this bill of exceptions, the deposition of William G. Lane, in the words and figures following, to wit:—

(*Deposition of Wm. G. Lane.*)

United States of America, Southern District of New York, city, county and State of New York, ss.

Be it remembered, that on this the 11th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812," and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall Street, in the city of New York, in the said Southern District of New York, in the State aforesaid, William G. Lane, as a witness to testify and the truth to say on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Northern District of Mississippi, wherein Drury W. Bowman is plaintiff and Jacob Thompson and others are defendants. And the said William G. Lane, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William G. Lane, and he did thereupon depose, testify, and say as follows, viz:—

I reside in the city of New York, and am engaged in the mercantile business in said city.

1st Q. Do you know the parties to this action, or any of them, and which of them?

A. I know the plaintiff and one Mr. Powell, but I don't know his first name, who I believe is one of the defendants; the other defendants I do not know.

2d Q. Do you know Leroy M. Wiley, of this city?

A. I do know him.

3d Q. Do you know of a purchase of any lands in Mississippi of Mr. Ford or Mr. Powell by Mr. Wiley?

(Objected to by Mr. Potter for defendants.)

A. I know of a purchase made; I have seen the deed from William G. Ford to Leroy M. Wiley of lands in Mississippi.

4th Q. Do you know anything about the negotiations for the purchase?

A. Yes.

5th Q. Do you know by whom the subject was introduced to Mr. Wiley?

(Obj. to by def'ts' counsel.)

A. I was introduced by Mr. Bowman to Mr. Powell, and afterwards Mr. Powell was introduced to Mr. Wiley, by whom I cannot say; it was either by myself or Mr. Bowman.

6th Q. Were any maps produced in your presence to Mr. Wiley, relating to the lands of which you have spoken?

A. There was.

7th Q. By whom were they produced?

A. By either Mr. Bowman or Mr. Powell; can't say which, but think by Mr. Bowman; that is my present recollection.

8th Q. Were any such maps produced to you before they were produced to Mr. Wiley?

(Obj. to by def'ts' counsel.)

A. I am inclined to think the same map was produced to me before it was produced to Mr. Wiley.

9th Q. Who first produced that to you?

A. My recollection is that it was Mr. Bowman, but I am not positive as to that.

10th Q. Had you ever seen that map before you was introduced to Mr. Powell?

A. My recollection is that Mr. Bowman showed me the map before I was introduced to Mr. Powell.

11th Q. Who first introduced to you the subject of the purchase of those lands?

A. Mr. Bowman.

12th Q. Was or was not that map produced by Mr. Bowman at your request?

A. I am induced to think it was, but I am not positive.

13th Q. State as near as you can about the time of the first interview on the subject between you and Mr. Bowman.

A. I think it was in July, 1856, or in the latter part of June.

14th Q. Do you know where those lands were located?

A. They lay principally in Washington, Issequena, Holmes, and Yazoo Counties; there were about one hundred and fifty thousand acres.

15th Q. Do you know at what price they were sold to Mr. Wiley?

A. Seventy-five cents per acre.

16th Q. Were you interested in that purchase?

A. Yes, sir.

17th Q. Why was the deed taken in the name of Mr. Wiley?

A. By agreement between us.

Cross-examination by Mr. Butler on the part of Defendants.

Q. Who did you and Mr. Wiley negotiate with for the purchase of the lands you have spoken of?

A. It was Mr. Powell I have spoken of.

Q. Was there much negotiation between you and him, or between Mr. Wiley and him as to the price of the lands?

A. Yes, we were negotiating extending during a week, as to the price principally.

Q. Did anybody else take part in that negotiation on behalf of the seller besides Mr. Powell? and if so, whom?

A. I think there was a person who took part in the negotiation with Mr. Wiley and Powell, by the name of Daniel Low, no one else that I know of.

Q. Did, so far as you know, Mr. Bowman, have anything to do with the sale except introducing Mr. Powell?

A. Not that I am aware of.

Q. Was not the price originally asked for the property much greater than that which was paid for it?

A. It was.

Q. Did Mr. Bowman ever make any efforts to sell the property to you?

A. I think he did; he appeared anxious at the time he introduced Mr. Powell that Mr. Wiley should purchase it.

Q. At what price?

A. I am not positive now, but I think one dollar or one dollar and a quarter per acre.

Q. No bargain was ever made with Mr. Bowman in the matter?

A. No, sir.

Re-direct Examination.

Q. Did Mr. Bowman ever name a price for the property?

A. I can't say whether he did or not; that is, any positive price.

Q. Had you ever seen Mr. Powell on the subject of the purchase of those lands before he was introduced by Mr. Bowman?

A. I had not.

Q. Had Mr. Wiley to your knowledge?

A. To my knowledge he had not. WM. G. LANE.

Sworn to before me, this 11th day of November, 1857.

CHAS. W. NEWTON,
U. S. Com'r, No. 74 Wall St., N. Y.

United States of America, Southern District of New York.

I, Charles W. Newton, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled, "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed

September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is and the fact is the within testimony material and necessary in the cause in the caption of said deposition named, and that he resides more than one hundred miles from the place of trial of the above entitled cause. I further certify that a notification of the time and place of taking the said deposition signed by me, was made out and served on the Messrs. Butler, Everts and Southmayd, in the city of New York, who act as counsel for defendants in said city, to be present at the taking of the said deposition, and to put interrogatories if he or they might think fit. I further certify that on the (11th) eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Mr. Butler, one of the members of said firm of Butler, Everts and Southmayd, as counsel for defendants, and by John S. Woodward, Esq., for plaintiff, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from such statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand by mail, to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States eighty-first. CHAS. W. NEWTON,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

And the plaintiff then read as evidence to the jury, a deed executed by William G. Ford and wife to Leroy M. Wiley, in the words and figures following, to wit:—

(*Deed from William G. Ford and Wife to L. M. Wiley.*)

This indenture, made the fourth day of August, one thousand eight hundred and fifty-six, between William G. Ford, of the city of Memphis and State of Tennessee, and Mary G. Ford, his wife, parties of the first part, and Leroy M. Wiley, of the city of New York, party of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of one hundred and eleven thousand nine hundred and sixteen dollars and sixty-six cents lawful money of the United States, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these

presents, the receipt whereof is hereby acknowledged. And the said party of the second part, his heirs, executors, and administrators forever release and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, by these presents, do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, his heirs and assigns forever, all those pieces or parcels of land situated, lying and being in the State of Mississippi, and described as follows: The west half of southwest quarter of section No. one (1), south half of section No. two (2), the whole of section eleven (11), west half of west half of section No. (12) twelve, west half and west half of southeast quarter of section No. thirteen (13), the whole of section No. fourteen (14), the whole of section No. twenty-three (23), west half of section No. twenty-four (24), the whole of section No. twenty-five (25), the whole of section No. thirty-six (36), in township No. nine (9), west half of northeast quarter of section No. eight (8), north half and southwest quarter of section No. fifteen (15), east half of section No. twenty-one (21), the whole of section No. twenty-two (22), the whole of section No. twenty-seven (27), east half and east half of west half of section No. twenty-eight (28), in township No. eleven (11), and of range No. seven west, also those pieces or parcels of land situated in said State of Mississippi, and described as follows:—

The south half of section No. seventeen (17), in township No. thirteen (13), the whole of section No. nine (9), each half of section No. seventeen (17), east half of section No. nineteen (19), the whole of section No. twenty (20), east half of east half of section No. twenty-one (21), northeast quarter, east half of west half, and west half of southeast quarter of section No. twenty-seven (27), north half of section No. (29) twenty-nine, northeast quarter of section No. thirty (30), in township No. fourteen (14), and south half and northwest quarter of section No. four (4), north half southeast quarter and east half of southwest quarter of section No. five (5), east half of section No. eight (8), west half of northeast quarter of section No. thirteen (13), the whole of section No. fifteen (15), east half of section No. seventeen (17), northeast quarter of section No. twenty (20), north half, southeast quarter, and east half of southwest of section No. twenty-one (21), in township No. fifteen (15), all of range No. seven (7) west. Also, all those pieces or parcels of land situate in , State of Mississippi, and described as follows:—

The west half, and the west half of the east half of section No. three (3), and the whole of section No. (4), and the east half of section No. five (5), and the east half of section No. eight (8), and the north half and the west half of the southwest quarter of section No. ten (10), and the west half, and the west half of the southeast quarter of section No. fifteen (15), and the west half of section No. seventeen (17), and the west half of section No. eighteen (18), and the whole of section No. nineteen (19), and the whole of section No. twenty (20),

and the north half of section No. twenty-one (21), and the northwest quarter, and the west half of the northeast quarter of section No. twenty-two (22), and the whole of section No. twenty-nine (29), and the whole of section No. thirty (30), and the whole of section No. thirty-one (31), and the north half, and the southwest quarter of section No. thirty-two (32), and the northwest quarter of section No. thirty-three (33), and the east half of section No. thirty-six (36), all in township No. twelve (12), of range No. seven (7) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows: The north half of section No. twenty-seven (27), the whole of section No. twenty-eight (28), north half and southwest quarter of section No. thirty-three (33), north half of section No. thirty-four (34), in township No. fifteen (15), and of range No. seven (7) west, and south half of section No. four (4), northeast quarter of section No. seven, the whole of section No. eight (8), east half of section No. nine (9), the whole of section No. seventeen (17), southeast quarter, and east half of southwest quarter of section No. eighteen (18), north half, and southeast quarter of section No. nineteen (19), the whole of section No. twenty (20), south half, and northwest quarter of section No. twenty-one (21), the whole of section No. twenty-eight (28), the whole of section No. twenty-nine (29), east half, and southwest quarter of section No. thirty (30), the whole of section No. thirty-one (31), the whole of section No. thirty-two (32), the whole of section No. thirty-three (33), north half, and southwest quarter, and west half of southeast quarter of section No. thirty-four (34), in township No. sixteen (16), and of range No. seven (7) west. Also, all those pieces or parcels of land situated in the said State of Mississippi, and described as follows:—

The south half of section No. two (2), and the whole of section No. three (3), and the east half of the southeast quarter, and the west half of the southwest quarter of section No. four (4), and the north half, and the southwest quarter of section No. ten (10), and the whole of section No. eleven (11), and the north half of section No. fourteen (14), all in township No. thirteen (13), of range No. seven (7) west, and the west half of the west half of section No. six (6), and the west half, and the northeast quarter of section No. seven (7), and the northwest quarter, and the west half of the northeast quarter of section No. eight (8), and the east half, and the southwest quarter of section No. seventeen (17), and the whole of section No. eighteen (18), and the east half of section No. twenty (20), and the east half of section No. twenty-nine (29), all in township No. seventeen (17), of range No. seven (7) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows:—

The east half of section No. thirty-six (36), in township No. eighteen (18), of range No. seven (7) west, and the whole of section No. thirteen (13), and the north half, and the southeast quarter, and

the east half of the southwest quarter of section No. fourteen (14), and the northeast quarter of section No. fifteen (15), and the west half of the northeast quarter of section seventeen (17), and the whole of section No. twenty (20), and the west half, and the southeast quarter of section No. twenty-one (21), and the south half of section No. twenty-two (22), and the east half, and the southwest quarter, and the east half of the northwest quarter of section No. twenty-three (23), and the south half, and the southwest quarter of section No. twenty-four (24), and the west half of section No. twenty-five (25), and the whole of section No. twenty-six (26), and the whole of section No. twenty-seven (27), and the whole of section No. twenty-eight (28), all in township No. nineteen (19), of range No. seven (7) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows: The north half of section No. twenty-nine (29), and the northwest quarter of section No. thirty-five (35), all in township No. nineteen (19), of range No. seven (7) west, and the southeast quarter, and the west half of the southwest quarter of section No. one (1), and the whole of section No. two (2), and the whole of section No. eleven (11), and lots No. one (1), two (2), three (3), five (5), six (6), seven (7), and eight (8), and nine (9), of section No. twelve (12), and the whole of section No. thirteen (13), and lot one (1), two (2), five (5), six (6), seven (7), and eight (8), of section No. twenty-four (24), and whole of section No. twenty-five, and lots No. one (1), and eight (8), of section No. twenty-six (26), and lots No. one (1) and two (2) of section No. thirty-six (36), all in township No. nine (9), of range No. eight (8) west, and the west half, and the southeast quarter, and the east half of the northeast quarter of section No. seven (7), and the whole of section No. eight, and the whole of section No. nine (9), all in township No. ten (10), of range No. eight (8) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows:—

The west half of the northwest quarter of section No. (35), in township No. sixteen (16), range No. seven (7) west, lots No. two (2), three (3) and four (4), in section No. eleven (11), lots No. six (6) and seven (7), in section No. twelve (12), east half of northeast quarter of section No. fifteen (15), east half, and east half of southwest quarter of section No. twenty-two (22), lots No. four (4), in section No. twenty-three (23), west half of east half of section No. twenty-four, (24), east half and southwest quarter of section No. twenty-five (25), east half, and east half of west of section No. twenty-seven (27), south half and northeast quarter of section No. thirty-two (32), south half and northwest quarter and west half of northeast quarter of section thirty-three (33), in township No. thirteen (13), west half of section No. three (3), west half and southeast quarter of section No. fourteen (14), east half of section No. fifteen (15), the whole of section twenty-two (22), the whole of section No.

twenty-three, in township No. fourteen (14), range No. six (6) west. Also all those pieces or parcels of land situated in said State of Mississippi and described as follows: Lots No. one (1), two (2), three (3), and four (4), of section No. twelve (12), and the whole of section No. thirteen (13), and lots No. four (4) and five (5) of section No. seventeen (17), and the whole of section No. twenty-three (23), and lots No. (1), of section No. twenty-six (26), and the west half, and the west half of the east half of section No. twenty-seven (27), and the north half of section No. twenty-eight (28), and the south half of section No. thirty-five (35), and the west half, and the west half of the east half of section No. thirty-six (36), all in township No. ten (10), of range No. eight (8) west, and the whole of section No. five (5), and the whole of section No. six (6), and the whole of section No. seven (7), and the whole of section No. fourteen (14), and the west half of section No. fifteen (15), and the north half and the southwest quarter of section No. seventeen (17), all in township No. eleven (11), of range No. (8) west. Also all those pieces or parcels of land situated in said State of Mississippi, and described as follows:—

The west half of west half of section *of section* No. twenty-four (24), north half and southeast quarter and east half of southwest quarter of section No. twenty-seven (27), south half and east half of northwest quarter of section No. thirty-four (34), in township No. fourteen (14), east half of section No. one (1), west half of section No. three (3), east half of section No. four (4), northeast quarter of section No. five (5), in township No. eighteen (18), and of range No. six (6) west, the whole of section No. thirty (30), in township No. thirteen (13), and range No. five (5) west, northwest quarter and west half of southwest quarter of section No. six (6), in township No. eighteen, and the whole of section No. fifteen, west half of section No. nineteen (19), northeast quarter of section No. twenty-two (22), south half of section No. twenty-three (23), the whole of section No. twenty-four (24), the whole of section thirty-one (31), in township No. nineteen (19), and of range No. five (5) west, west half of west half of section No. three (3), north half and southeast quarter of section No. four (4), in township No. nine (9), range No. six (6) west. Also all those pieces or parcels of land situated in said State of Mississippi, and described as follows: The west half of the southeast quarter of section No. twenty-nine (29), in township No. nineteen (19), and range No. nine (9) west, north half and southeast quarter of section No. five (5), and the east half of section No. nine (9), and the whole of section No. ten (10), and the south half and the northwest quarter of section No. eleven (11), and the south half and the northwest quarter of section No. fourteen, and the northeast quarter of section No. eighteen (18), and the northwest quarter and the southeast quarter, and the east half of the southwest quarter of section No. twenty (20), and the south half and the northeast quarter of section No. twenty-one (21), all in township No. nine (9),

of range No. six (6) west, and the west half of the southwest quarter of section No. twenty, and the southeast quarter of section No. twenty-one (21), all in township No. seventeen (17), of range No. nine, west, and lots No. two (2), three (3), four (4), five (5), six (6), seven (7), of section No. twenty-nine (29), and the south half and the northwest quarter, and the west half of the northeast quarter, and the southeast quarter of the northeast quarter of section No. thirty (30), all in township No. twelve (12), of range No. six (6) west. Also all those pieces or parcels of land situated in said State of Mississippi, and described as follows: lots No. one (1), three (3), four (4), five (5), six (6), and seven (7), in section No. eighteen (18), east half of section No. twenty-five (25), lots No. two (2) and three (3) of section No. twenty-six (26), the whole of section No twenty-seven (27), southwest quarter and west half of southeast quarter of section No. thirty-eight, in township No. eleven (11), lots No. one (1), two (2), four (4), five (5), six (6), and seven (7), in section No. twenty-six (26), the whole of section No. twenty-seven, (27), lots No. seven (7), in section No. twenty-eight (28), lot No. one (1), in section No. thirty-seven (37), the whole of section No. thirty-eight, in township No. twelve (12), lots No. four (4), in section No. one (1), southeast quarter of section No. two (2), lots No. one (1) and five, in section No. eleven (11), in township No. thirteen, the whole of section No. eighteen, lots No. one and two (2), in section No. twenty-three (23), in township No. fourteen (14).

North half southeast quarter, and east half of southwest quarter of section No. six (6), in township No. seventeen (17), east half of section No. thirty-eight (38), in township No. eighteen (18), and of range No. eight (8) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows: Northeast quarter of section No. three (3), north half, southwest quarter, and west half of southeast quarter of section No. four (4), northwest quarter of the southwest quarter, northeast quarter of southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section No. five (5), in township No. thirteen (13), and range No. one (1), west, east half, and east half of southwest quarter of section No. one (1), east half of northeast quarter of section No. two (2), north half of section No. three (3), northeast quarter, east half of northwest quarter, southeast quarter, and east half of the southwest quarter of section No. eleven (11), west half of section No. twelve (12), west half of section No. thirteen (13), the whole of section No. fourteen (14), east half of northeast quarter, and southeast quarter of section No. fifteen (15), southeast quarter of section No. twenty (20), west half of section No. twenty-one (21), east half of section No. twenty-two (22), west half of section No. twenty-six (26) whole of section No. twenty-seven (27), in township No. fourteen (14), and range No. one (1) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows: The north half, southeast quarter, northwest

quarter of the southwest quarter, and southeast quarter of the southwest quarter of section No. twenty-eight (28), the whole of section No. twenty-nine (29), southwest quarter of section No. thirty (30), the whole of section thirty-two (32), north half, southeast quarter, and west half of southwest quarter of section No. thirty-three (33), the whole of section No. thirty-four (34), northwest quarter, west half of southwest quarter of section No. thirty-five (35), east half of northeast quarter, southeast quarter of southeast quarter, and southwest quarter of southwest quarter of section No. thirty-six (36), in township No. fourteen (14), northeast quarter of section No. three (3), north half of section No. four (4), the whole of section No. five (5), lots No. one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-five (25), in section No. six (6), north of B'dy line, lots No. one (1), two (2), three (3), four (4), seven (7), and eight, in section No. seven (7), south of B. line, in township No. fifteen (15), and range No. one (1) west. Also, all those pieces or parcels of land situated in said state of Mississippi, and described as follows: Lots No. four (4) and five (5), in section No. nineteen (19), lots No. four (4), five (5), six (6), and seven (7), in section No. thirty-four (34), north half and southeast quarter of section No. thirty-six (36), in township No. fifteen (15), southwest quarter of section No. eighteen (18), the whole of section No. nineteen (19), and west half of section No. twenty-nine (29), the whole of section No. thirty (30), west half and southeast quarter of section No. thirty-two (32), southwest quarter of section No. thirty-three (33), lot No. eleven (11) and twelve (12) in section No. thirty-six (36), in township No. sixteen (16), the whole of section No. eighteen (18), north half and southeast quarter of section No. two (2), south half and south half of northeast quarter of section No. eight (8), northeast quarter of section No. twelve (12), north half and southwest quarter of section No. nineteen (19), lots No. eleven (11) and twelve (12) of section No. twenty-one (21), in township No. seventeen (17), south half of northeast quarter and south half of northwest quarter of section No. five (5), northwest quarter of section No. seventeen (17), northwest quarter of section No. thirty (30), township No. eighteen (18), range No. one (1) west. Also, all those pieces or parcels of land situated in said State of Mississippi, described as follows: The north half of section No. five (5), lot No. three (3), in section No. eight (8), the whole of section No. six (6), north half and southwest quarter of section No. seven (7), south half of section No. thirteen (13), south half of section No. fourteen (14), southwest quarter of section No. eighteen (18), and east half of section No. twenty-two (22), the whole of section No. twenty-three (23), west half of section No. twenty-four (24), north half, southwest quarter, and west half of southeast quarter of section No. twenty-six (26), lots No. one (1) and

eight (8) in section No. thirty-four (34), in township No. thirteen (13), lots No. three (3) in section No. one (1), lot No. one (1), two (2), three (3), and four (4), in section No. two (2), lots No. one (1) in section No. three (3), southwest quarter and east half of northwest quarter of section No. seven (7), east half of northwest quarter and west half of northeast quarter section No. eighteen (18), northeast quarter of southwest quarter of section No. twenty-four (24), northwest quarter, southeast quarter, and east half of southwest quarter of section No. twenty-five (25), in township No. fourteen (14), range No. two (2) west. Also, all those pieces or parcels of land situated in said State of Mississippi, described as follows: The north half and southwest quarter of section No. thirty (30), west half and southeast quarter of section No. thirty-one (31), the whole of section No. thirty-two (32), lot No. five (5), section No. thirty-five (35), lots No. four (4) and six (6) in section No. thirty-six (36), in township No. fourteen (14), the whole of section No. one (1), the whole of section No. two (2), northeast quarter of section No. three (3), lots No. two (2) and seven (7), in section No. six (6), east half of section No seven (7), west half of west half and west half of southeast quarter of section No. eight (8), north half and southeast quarter of section No. eleven (11), the whole of section No. twelve (12), northwest quarter of section No. thirteen (13), southwest quarter and east half of northeast quarter of section No. fourteen (14), northwest quarter of section No. seventeen (17), the whole of section No. eighteen (18), southeast quarter and east half of northeast quarter of section No. twenty (20), the whole of section No. twenty-one (21), west half of section No. twenty-two (22), lots No. five (5) and eight (8), section No. twenty-four (24), in township No. fifteen (15), range No. two (2) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows: Lot No. one (1), in section No. twenty-five (25), lots No. two (2), three (3), five (5), and six (6), in section No. twenty-nine (29), west half and northeast quarter and west half of southeast quarter of section No. thirty (30), in township No. fifteen (15), lots No. one (1), three (3), fifteen (15), sixteen (16), twenty-two (22), twenty-three (23), twenty-four (24), twenty-seven (27), and twenty-nine (29), in section No. eight (8), in township No. sixteen (16), lots No. one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), thirteen (13), fourteen (14), and sixteen (16), in section No. twenty-five (25), in township No. seventeen (17), the whole of section No. thirty-three (33), southwest quarter and west half of east half of section No. thirty-four (34), in township No. nineteen (19), and range No. two (2) west, east half of northwest quarter of section No. seven (7), south half and northeast quarter of section No. six (6), east half and northwest quarter of section No. eight (8), northwest quarter of southwest quarter of section No. nine (9), in township No. ten (10), whole of section No. five, whole of section No. six (6), whole of section No. seven (7), in township No. eleven (11), range

No. three (3) west, south half and northeast quarter of section No. eleven (11), in township No. sixteen (16), and range No. six (6) west. Also, all those pieces or parcels of land situated in said State of Mississippi, and described as follows:—

The whole of section No. eight (8), west half of section No. four (4), west half and northeast quarter of section No. seventeen (17), the whole of section No. eighteen (18), northwest quarter of section No. nineteen (19), southwest quarter of section No. twenty-two (22), lots five (5) and six (6) in section No. twenty-nine (29), southwest quarter of section No. thirty-two (32) in township No. eleven (11), and of range No. three (3) west, southwest quarter of section No. seven (7), lot No. three (3) in section No. thirteen (13), southwest quarter of section No. eighteen (18), northwest quarter of section No. nineteen (19), east half southwest quarter, and east half of northwest quarter of section No. twenty-nine (29), the whole of section No. thirty-one (31), the whole of section No. thirty-two (32) in township No. twelve (12), the whole of section No. one (1), east half of section No. two, south half of section No. ten (10), the whole of section No. eleven (11), the whole of section No. twelve (12), west half and southeast quarter of section No. thirteen (13), in township No. thirteen (13), and of range No. three (3) west, also all those pieces or parcels of land situated in the said State of Mississippi, and described as follows: The whole of section No. thirty-one (31), lots No. two (2), three (3), four (4), five (5), in section No. thirty-two (32), in township No. twelve (12), west half and northeast quarter of section No. two (2), the whole of section No. three (3), east half of the southeast quarter of section No. nine (9), north half and southeast quarter of section No. ten (10), in township No. thirteen (13), and of range No. six (6) west, north half of section No. twenty-two (22), the whole of section No. twenty-eight (28), northeast quarter and east half of the northwest quarter of section No. twenty-nine (29), and southwest quarter of section No. thirty-one (31), in township No. nine (9), and of range No. six (6) west, east half of section No. thirty-three (33), the whole of section No. thirty-four (34), in township No. nine (9), and range No. six (6) west, also all those pieces or parcels of land situated in the said State of Mississippi, and described as follows: North half and southeast quarter of section No. seventeen (17), northeast quarter of section No. eighteen (18), northeast quarter of section No. twenty-four (24), in township No. thirteen (13), west half of west half of section No. six (6), south half of section No. twelve (12), west half of east half of section No. thirteen (13), west half of southeast quarter of section No. fifteen (15), the whole of section No. twenty-five (25), east half of section No. thirty-five (35), east half and southwest quarter of section No. thirty-six (36), in township No. fourteen (14), lot No. six (6), in section No. two (2), west half of section No. seven (7), southeast quarter and east half of southwest quarter of section No. nine (9), lot No. six (6), in section No. ten (10), south half of section No. eleven (11), south

half of section No. twelve (12), the whole of section No. thirteen (13), the whole of section No. fourteen (14), northwest quarter of section No. eighteen (18), south half of section No. nineteen (19), southwest quarter of section No. twenty-three (23), northeast quarter of section No. twenty-five (25), west half of section No. twenty-six (26), in township No. fifteen (15), and of range No. three (3) west, also all those pieces or parcels of land situated in said State of Mississippi, and described as follows: Lots no one (1) and five (5), in section No. twenty-eight (28), the whole of section No. twenty-nine (29), the whole of section No. thirty (30), east half of section No. thirty-two (32), west half of section No. thirty-three (33), lots No. three (3) and four (4), in section No. thirty-five (35), in township No. fifteen (15), and of range No. three (3) west, the whole of section No. seven (7), south half and northwest quarter of section No. eight (8), the whole of section No. seventeen (17), the whole of section No. eighteen (18), the whole of section nineteen (19), west half and northeast quarter of section No. twenty (20), west half of northwest quarter of section twenty-nine (29), the whole of section No. thirty (30), in township No. nine (9), lots No. three (3), and four (4), in section No. three (3), west half of northwest quarter of section No. four (4), northeast quarter of section No. five (5), south half and northwest quarter of section No. nine (9), west half of section No. fifteen (15), south half of section No. eighteen (18), the whole of section No. nineteen (19), southwest quarter of section No. twenty (20), in township No. ten (10), and range No. four (4) west, also all those pieces or parcels of land situated in said State of Mississippi, and described as follows: The fractional section No. seventeen (17), the whole of section No. eighteen (18), in township No. twenty-nine (29), and of range No. one (1) west, north half of section No. one (1), northwest quarter of section No. twenty-four, the whole of section No. twenty-five (25), south half northeast quarter, and south half of northwest quarter of section No. twenty-six (26), south half of section No. twenty-seven (27), north half of section No. thirty-four (34), in township No. twenty-seven (27), and of range No. two (2) west, north half of section twenty-three (23), north half of section No. twenty-four (24), southwest quarter of No. twenty-six (26), south half of section No. twenty-seven (27), in township No. fifteen (15), west half of section No. twenty-seven (27), north half and southeast quarter of section No. twenty-eight (28), east half of section No. thirty-three (33), west half of northwest quarter of section No. thirty-four (34), in township No. sixteen (16), and range No. six (6) west, containing in all one hundred and forty-nine thousand two hundred and twenty-two $\frac{22}{100}$ acres, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, in anywise appertaining, and the reversions and revisors, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of

said parties of the first part, of, in, and to the said and every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever, and the said William G. Ford, for himself, his heirs, executors, and administrators, doth covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said Wm. G. Ford, at the time of the sealing and delivery of these presents, is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple of same in all and singular the above granted and described premises, with the appurtenances, and hath good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner aforesaid, and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the same are now free, clear, discharged and unencumbered of and from all former and other goods, titles, charges, estates, judgments, taxes, assessments and incumbrances, of what nature or kind soever, and also that the said parties of the first part and their heirs, and all and every person or persons whomsoever, lawfully or equitably demising, and estate, right, title or interest, of, in, or to the hereinbefore granted premises, by, from, under or in trust for them, shall and will at any time or times hereafter, upon the reasonable request and at the proper cost and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyance and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required, and the said William G. Ford, and his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend. In witness whereof, the parties of these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

WILLIAM G. FORD, [SEAL.]
MARY G. FORD. [SEAL.]

Sealed and delivered by Daniel Low, his attorney, in the presence of G. R. S. BOWDON,
EDWIN F. COREY.

By DANIEL LOW, his Attorney.

N. B. The word west half of section No. twenty, and the word north on fourth page hereof, stricken out, and the words township No. fifteen, west half of section No. twenty-seven, on sixth page hereof, interlined before executed.

United States of America, State of New York, City and County of New York.

Be it remembered, that on this sixth day of August, in the year one thousand eight hundred and fifty-six, before me the undersigned, Edwin F. Cory, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and the laws of the State of Mississippi, to the acknowledgments of deeds, &c., to be used or recorded therein personally, Daniel Low, known to me to be the attorney in fact of Wm. G. Ford and Mary G. Ford, his wife, the individual described, and who executed the annexed instrument by their said attorney, and said Daniel Low acknowledged he executed the same as the act and deed of Wm. G. Ford and Mary G. Ford.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

EDWIN F. CORY,

Commissioner in the State of Mississippi, Office, Merchants' Ex., New York.

State of Mississippi, Tunica County.

I, J. C. Nelson, clerk of the Probate Court of said county, certify that the foregoing deed and certificate was filed for record in my office, October 13th, 1856, and the same has been duly recorded in book B, pages 429 to 440 inclusive.

Given under my hand and seal of office this 13th day of October, 1856.

The State of Mississippi, Tunica County.

I, J. C. Nelson, clerk of the Probate Court of said county, do certify that the foregoing pages contain a true copy of a deed from W. G. Ford to Leroy M. Wiley, as of record, in my office, in book B, pages 429 to 440 inclusive.

Given under my hand and the seal of said court, at office, this 8th day of May, 1858. J. C. NELSON, Cl'k.

And the plaintiff then read to the jury as evidence, a letter addressed to the plaintiff by the defendant Powell, in the words and figures following, to wit:—

(*Letter from Powell to Bowman.*)

Helena, 26th August, 1856.

Dear Bowman: I arrived home some days since and found my affairs all going on finely; I have a fine crop both of corn and cotton, and the country quite healthy. When I came home I found, as I expected, that 100 dollar draft paid; Ford was out of town; I have no doubt Mr. Kirtland knew the fact at the time I left New York. I look on him as an *ass*. I hope you have the hundred dollars; as to the land matter of the company, we have not met, and I cannot now say when we will; I stated the case to Mr. Ford, in relation to the commissions that I thought you was entitled to, and he agreed with me, that you ought to have a commission, so we will settle that matter when you come south this winter. Bowman, by the gods that made Moses, I wish you well, for I never will forget your kind treatment to me while in New York; you are worth your weight in gold when it comes to being a clever man: give my love to Sellers and Mc., and say to them, I have not forgotten them. Where is Jim Anderson, and when is he coming home? Give my love to all the that women we knew, and say to them I will be in New York again before I die: I want you to receive the kind wishes of a true friend, and may you always live: let me hear from you. If Jim Anderson is there give him my love, and also Watson.

Yours, with high respect,

JNO. M. POWELL.

And the plaintiff here rested his case, and thereupon the defendants introduced and read to the jury as evidence, the statement of J. A. Orr, in the words and figures following, to wit, O.'s statement:—

(*J. A. Orr's Testimony.*)

I reached New York on the 15th June, left 15th July, 1856; roomed with Powell; I heard frequent conversations between Powell and Bown and others, on the subject of the sale of the lands. There was a minimum fixed by Powell, Thompson and Ford, at 80 or 90 cents per acre; less than 80 was not entertained: Powell proposed to Bowman and others, that if they could sell at a price above the minimum, the excess would be equally divided between Powell and the person effecting the sale. He never in my presence proposed to give a per cent. to any person inducing the sale; our social intercourse was constant and frequent with Bowman while I remained in New York. The above, I believe, embodies my statement.

ORR.

Additional Statement.

Hon. Jacob Thompson was with Messrs. Powell & Ford at New York in June and July, 1856, on the business of selling the partnership land, as I understood from them; he remained, I think, about ten days, perhaps not so long, after I reached New York, and was

present when frequent conversations occurred in reference to a sale of the land: Mr. Thompson was present when the sale was spoken of and was participating in the negotiation for the sale of the land to the same extent that Messrs. Ford & Powell were, even up to the time of his leaving New York; I remember to have separated from him on one occasion, when he announced to me that he was going to fill an engagement with some broker, I think on the subject of the sale. This is a part of the statement heretofore made, and which I refer in this statement.

June 7th, 1859. J. A. ORR.

And the defendants then introduced and read to the jury, as evidence, the deposition of Leroy M. Wiley, Edward P. Wood, Edward O. Perrin, and Daniel Low, in the words and figures following, to wit:—

D. W. BOWMAN
vs.
THOMPSON, POWELL & FORD.

U. S. District Court, Northern District of Mississippi, Pontotoc.

State of New York, City and County of New York.

Be it remembered, that on the 16th day of November, one thousand eight hundred and fifty-eight, before me, a commissioner to take acknowledgments of deeds and depositions, &c., in the State of New York, to be used in the State of Mississippi, duly appointed by the executive of the State of Mississippi, and qualified under the laws thereof, and also a notary public appointed by the executive authority of the State of New York, and duly qualified under the laws thereof, appeared Leroy M. Wiley, in pursuance of the annexed notice, a witness for defendant, and sundry other witnesses hereinafter named in pursuance of the several notices herewith annexed, before me, and each of them being duly sworn to speak the truth, the whole truth and nothing but the truth, in the cause above entitled, did depose and say, as in the annexed schedule set forth: Leroy M. Wiley, a witness of lawful age, being over twenty-one years, and of sound mind, being duly sworn, did depose and say to the interrogatories here set forth, as follows, to wit:—

D. W. BOWMAN
vs.
THOMPSON, POWELL & FORD.

In the District Court of the U. S. for the Northern District of the State of Mississippi, at Pontotoc.

D. W. Bowman, 104 Wall St., New York.

Sir: You are hereby notified, that the defendants in the above case will take the deposition of Leroy M. Wiley, at the counting-house of Wm. G. Lane, No. 194 Broadway, in the city of New York,

on Tuesday, the 16th day of November, at 11 o'clock A. M., at which time and place you can appear in person or by attorney, and cross-examine. E. O. PERRIN,

New York, Nov. 15, 1858. Att'y for Defendants.

104 Wall St., New York, Nov. 16, 1858.

I, K. M. Murchison, of the firm of Bowman & Murchison, do certify that a copy of the within notice was left at the office of Bowman & Murchison, 104 Wall St., New York, by John M. Powell, one of the defendants mentioned in the above case, at the hour of 10 o'clock, Nov. 16, 1858, D. W. Bowman being absent from the city of New York. K. M. MURCHISON.

(*Deposition of L. M. Wiley.*)

Question 1st. What is your name and business, and where do you reside?

Answer. Leroy M. Wiley; I am a planter, I reside in Alabama.

Question 2d. Did you ever purchase any lands from Messrs. Powell, Thompson & Ford, in the state of Mississippi? if so, when and how much did you purchase, and at what rate per acre?

Answer. I did; in August, 1856, about one hundred and fifty thousand acres, at seventy-five cents per acre.

Question 3d. With whom did you negotiate for said land, and by whom were you introduced to said party?

Answer. John M. Powell of Miss.; I was introduced to him by William G. Lane of New York city.

Question 4th. Did you ever know a Mr. D. W. Bowman of New York, in connection with said purchase; did he ever negotiate with you on the subject, or have anything to do in inducing you to purchase said lands or influence or induce you in any manner to make said purchase?

Answer. All I know of Mr. Bowman in this matter, was conversation about Mississippi lands, that he owned some himself, but I never knew him as a salesman or negotiator of these lands at all; I never treated with him as such, but with Mr. Powell, and in short, I never knew or regarded Mr. Bowman as a negotiator or seller of the lands; I purchased of Messrs. Powell, Thompson & Ford. And further, this deponent sayeth not. L. M. WILEY.

No other witnesses appearing, the taking of further depositions was adjourned to Friday the 19th November, 1858, and from the 19th November, the taking of testimony was further adjourned to the 20th November, to the office of the commissioner, 20 Nassau St., in the city of New York, when the following witnesses appeared, and were duly sworn to testify the truth, the whole truth, and nothing but the truth. R. Q. WATKINSON,

Comms. and Notary Public.

Edward J. Wood, a witness of lawful age, being duly sworn, and he being over 21 years, and of sound mind, deposes and says, as in the annexed schedule set forth :—

(*Deposition of Edw'd J. Wood.*)

State of New York, City and County of New York, ss.

Edward J. Wood (a lawyer), of the city of Brooklyn, being duly sworn, deposes and says, that during the summer of 1856, in the city of New York, E. O. Perrin came to the house of this deponent, and asked him, this deponent, to go with him and see one John M. Powell, at the Astor House, in the city of New York, in reference to some lands said Powell had for sale in the State of Mississippi; that he, this deponent, with the said Perrin, might sell the same and receive a commission for said sale from the said Powell. This deponent, on the following day, went with said Perrin to the hotel of said Powell, and said Powell then and there agreed to pay this deponent and the said Perrin, all the sum they could realize for said lands over and above the sum of ninety cents per acre for sales, and in case no sale was made, the said Powell was not to pay for services of said Perrin and this deponent; and this deponent further says, that he failed to dispose of the said lands, and never made, or has intended to make, any charge for services in making the attempt to dispose thereof.

Sworn to before me, this 20th day of November, 1858.

EDWARD WOOD.

D. W. BOWMAN
vs.
THOMPSON, POWELL, & FORD.

District Court of the U. S. for the Northern District of the State of Mississippi, at Pontotoc.

D. W. Bowman, Esq., 104 Wall St.

Sir: Notice is hereby given, that the defendants in this case will take the depositions of Daniel Low, E. O. Perrin, and E. F. Wood and others, at Room No. 112, Astor House, N. Y., on Friday, the 19th day of November, 1858, at 12 o'clock M., and will continue to take said depositions from day to day at said hour of 12 o'clock until all the testimony is taken: you can appear and cross-examine either in person or by attorney.

E. O. PERRIN,
Att'y for Def'ts.

104 Wall St., New York, Nov. 17th, 1858.

I, R. M. Murchison, of the firm of Bowman & Murchison, doing business at No. 104 Wall St., N. Y., certify that John M. Powell, one of the defendants, left a copy of the within notice at the office of Bowman & Murchison, this 17th day of November, 1858, and that D. W. Bowman was absent from the city.

R. M. MURCHISON.

Edwin O. Perrin, a witness of lawful age, over 21 years, and of sound mind, being duly sworn, says:—

Interrogatory 1st, by defendant. What is your name, what is your business, and where do you reside?

Answer. My name is Edwin O. Perrin. I am a lawyer, doing business in the city of New York, and reside in the city of Brooklyn.

Interrogatory 2d. Do you know Messrs. Powell, Thompson, and Ford, the defendants in this case?

Answer. I do.

Interrogatory 3d. Did they, or either of them, ever enter into any arrangement with you to sell or aid them in selling any lands in the State of Mississippi?

Answer. They did.

Interrogatory 4th. Will you please state when such arrangement was entered into, and what was the nature of the agreement, and state as fully as you can all the particulars of the transaction?

Answer. During the summer of 1856, I met all the defendants, Powell, Thompson, and Ford, in this city; the only arrangement I made in relation to selling Mississippi lands was made with Mr. John M. Powell. He called upon me at my office, No. 24, Broadway, and informed me that he had for sale about one hundred and fifty thousand acres of swamp land in the State of Mississippi, and he desired to engage my services to aid him in selling the same; he then entered into a full explanation of the quality and value of the land. If my memory serves me, he asked at that interview one dollar, or one dollar and twenty-five cents per acre. He proposed, if I should negotiate the sale, to pay me ten per cent. commission. I took a memorandum of the lands and proceeded at once to endeavor to effect a sale. A short time thereafter, Mr. Powell informed me that the company would be satisfied if the land would net them 90 cents per acre, and he would pay me all I could make over and above that amount if I would sell them. I called immediately upon the Hon. Edward J. Wood, of this city, and desired him to aid me in making sale of the land property, to give him one half of all the commissions we could make over and above the 90 cents. But after several unsuccessful attempts, we failed to make a sale, and I learned a short time thereafter from Mr. Powell that he had sold the land himself, at I believe 75 cents per acre.

Interrogatory 5th. Did you introduce John M. Powell to any parties for the purpose of selling those lands? If so, in the event that he had sold the lands to said parties for a sum less than 90 cts. per acre, would you have considered yourself or Mr. Wood entitled to receive any commission for services under your understanding with Mr. Powell?

Answer. I did introduce Mr. Powell to several parties, and I believe Mr. Wood did also, and he made any sale for less than 90 cts. per acre to them, I should not have considered that I had any

claim upon Mr. Powell for commissions under my agreement with him.

Interrogatory 6th. Did you ever make any claim or call upon Mr. Powell for any fee for services rendered by yourself or Mr. Wood?

Answer. I never did.

And further this deponent sayeth not. E. O. PERRIN.

Daniel Low, a witness of lawful age, being over 21, and of sound mind, being duly sworn, deposes and says as follows:—

(*Daniel Low's Deposition.*)

Interrogatory 1st. What is your name, and where is your place of business?

Answer. My name is Daniel Low; my place of business is No. 17, Broadway, New York.

Int'ry 2d. Did you ever have any communication with, or have any agency in selling a large lot of Mississippi swamp lands to Leroy M. Wiley, of the city of New York, belonging to Messrs. Powell, Thompson, and Ford, of Mississippi?

Answer. I did.

Int'ry 3d. Will you please state fully all you know in relation to the sale and purchase of said lands by said Wiley, and also your agency in connection with or effecting said sale?

Answer. Messrs. Powell, Thompson, and Ford, had some one hundred and fifty thousand acres of land; the land was entered in the name of Wm. G. Ford, of Tennessee, some time during the summer of 1856; Mr. Ford and wife executed a power of attorney at the city of Memphis, authorizing and empowering me to execute deeds to any party or parties purchasing said lands.

Answer. A short time after the execution of the aforesaid power of attorney, Mr. John M. Powell, of Mississippi, one of the defendants in this suit, called upon me at my office in this city, and desired me to aid him in selling these lands, proposing to pay me a commission for my services. Mr. Powell was then asking $1 25 per acre. Some time during the month of August, 1856, Mr. Leroy M. Wiley, whom I had known for many years, called at my office, saying that he had been referred to me by Mr. Powell to give him information concerning the value, quality, and location of the lands heretofore mentioned. I entered fully into all the particulars he desired, informing him that I had invested myself very largely in the same lands; that they had proven very profitable investments, and advised him to make the purchase. Mr. Wiley called upon me very often after this interview, making some inquiries in relation to the lands, and advising with me on the subject. Mr. Powell also called upon me very frequently during this negotiation, and Mr. Wiley finally intimated that he would give 75 cents per acre if it was satisfactory. I submitted the proposition to Mr. Powell, and advised him to accept the offer, which he subsequently agreed to do if I could have the

payments made satisfactory to him. After further consultation with Mr. Wiley, he agreed to pay for the land as follows: $10,000 in cash; $27,000 when the papers were all properly made out and executed, and to give his note for the remainder at 12 months from date. I submitted this proposition to Mr. Powell, which he accepted. I executed the deed to Mr. Wiley, and received the $10,000 cash payment. During the fall of 1856, Wm. G. Ford, one of the defendants, drew drafts upon me for the $27,000 payment. I called upon Mr. Wiley, and he refused to pay the draft till Mr. Ford and wife executed a confirmation deed and put it on record in Mississippi, but proposed to loan me the $27,000 upon my individual note. I became personally responsible, received the $27,000, paid the draft of Wm. G. Ford, after which Mr. Ford and wife executed their deed, and Mr. Wiley returned my note. I considered myself the agent of Mr. Powell in effecting this sale, and as such, in connection with the liability I assumed upon the $27,000 payment, I charged him one per cent. commission, which considered fair compensation for my services in selling the land and responsibility I assumed upon Wm. G. Ford's draft, although I believe 1 per cent. commission for sale of lands in the city, and two and a half per cent. for land out of the city of New York is the usual commissions.

Inter'y 4th. Did you ever know one D. W. Bowman, of this city, in connection with the sale of these lands, or do you know whether he has ever aided or assisted in selling them to Mr. Wiley?

Answer. I never knew any such person in connection with the sale; never heard his name mentioned by Mr. Wiley, Mr. Powell, or any one else, until I heard of this suit having been instituted by a Mr. Bowman, of New York, in Mississippi, and further saith not.

DAN'L LOW.

State of New York, City and County of New York, ss.

I, Redford A. Watkinson, a commissioner duly appointed by the Executive authority of the State of Mississippi, and duly qualified under the laws thereof to take depositions, &c., in the State of New York, to be used in the State of Mississippi, do hereby certify that on the 16th day of Nov., Leroy M. Wiley, a witness in the cause named in the caption of this schedule, came before me as a witness in said cause, wherein D. W. Bowman is plaintiff, and Thompson, Powell, and Ford are defendants, and being duly sworn, testified as in the schedule set forth; and the hearing being adjourned to the 20th of November, as in the schedule noted, on said twentieth day before me came Edward T. Wood, Edwin O. Perrin, and Daniel Low, witnesses named in the annexed notices, and each of said witnesses being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as set forth, and their several depositions were each executed, acknowledged, and signed in my presence, and the said depositions have not been altered, nor out of my custody before the sealing, enclosing of them.

In witness whereof I have hereto set my hand and official seal as commissioner for the State of Mississippi, this 20th day of November, A. D. 1858. R. A. WATKINSON.

I, Redford A. Watkinson, a notary public of the State of New York, duly appointed by the Executive authority of the State of New York, and qualified under the laws thereof, do hereby certify that the witnesses named above, and the matters set forth in the above certificate, are as therein stated.

In witness whereof I have hereunto set my hand and notarial seal this 20th day of November, 1858.

R. A. WATKINSON,
Notary Public, Nassau St.

Fee, $20.

N. B. Under an act of Congress notaries take testimony for the Federal courts.

And this was all the testimony in the cause, and on the 8th day of June, 1859, the day being consumed before the conclusion of the argument, the court adjourned over to the following day, when the argument of the cause being concluded, the court proceeded to charge the jury as follows, to wit:—

(*Charges to the Jury.*)

1st. In this case, which is a very simple one of fact, scarcely justifying the time consumed in the protracted arguments of counsel, the jury should weigh the testimony and give their verdict according to the preponderance of evidence; that is, for the party in whose favor the testimony preponderates. Testimony proving the contract, with reasonable certainty, is all that is required; it is not necessary that the jury should be satisfied beyond a reasonable doubt.

2d. Each partner is the agent of all the partners composing the firm of which he is a member, but third persons dealing with an individual partner must ascertain, at their peril, that he is acting within the scope of the partnership.

3d. Each partner has a right to sell all the partnership property, real or personal, and to employ agents to sell it, and to bind the firm by an agreement to give such agent a commission for selling it.

4th. This suit being brought upon a special contract, the jury must either find for the plaintiff the full amount sued for, or for the defendants. They cannot find for the plaintiff what they may think he ought to have for his services, if such sum be less than the amount covered by the special contract alleged."

To which said opinion and decision of the court, embodied in the said four charges, the defendants, by their counsel, excepted at the time, and tendered this their bill of exceptions, praying that the same might be signed and sealed by the court and ordered to be made a part of the record in this cause, and the same is now and hereby done accordingly.

S. J. GHOLSON. [SEAL.]

And afterwards, to wit, on the 8th day of June, 1859, it being a day of the June term of said court, the following proceedings were had, to wit:—

(1*st Order of Court, June Term*, 1859.)

DRURY W. BOWMAN
vs.
JACOB THOMPSON et al.

Wednesday, June 8th, A. D. 1859.

This day came the parties, by their attorneys, and thereupon the plaintiff dismissed this suit as to John and William Griffin; and thereupon came a jury of good and lawful men, to wit, Wm. B. Augustus and eleven others, tried, sworn and empanelled well and truly to try the issue joined between the parties, and thereupon this cause was continued over until to-morrow morning.

And afterwards, to wit, on the 9th day of June, 1859, it being a day of the June term of said court, the following proceedings were had, to wit:—

(2*d Order of Court at June Term*, 1859.

DRURY W. BOWMAN
vs.
JACOB THOMPSON et al.

Thursday, June 9th, A. D. 1859.

This day again came the parties, by their attorneys, and also came the jury tried, sworn and empanelled at a former day of the present term of this court to try the issue between the parties, who upon their oaths for their verdict say they find for the plaintiff, and assess his damages at the sum of eleven thousand two hundred and fifty dollars. It is therefore considered by the court that the plaintiff recover of the defendants the damages by the jury aforesaid assessed, together with all costs in this behalf expended.

And afterwards, to wit, on the 11th day of June, 1859, the defendants filed their writ of error bond in this cause in the words and figures following, to wit:—

(*Writ of Error Bond.*)

United States of America, Northern District of Mississippi, sct.

Know all men by these presents, that we, Jacob Thompson, William G. Ford, John M. Powell and James Brown, are held and firmly bound unto Drury W. Bowman, in the just and full sum of twenty-two thousand five hundred dollars, lawful money of the United States, to be paid to the said Drury W. Bowman, his lawful attorney, executor, administrator or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our

seals and dated this 11th day of June, A. D. one thousand eight hundred and fifty-nine.

The condition of the above obligation is such, That whereas, at a term of the District Court of the United States for the Northern District of Mississippi, commenced and held at the town of Pontotoc, on the first Monday of June, A. D. 1859, judgment was rendered by said court in favor of the said Drury W. Bowman against the said Jacob Thompson, William G. Ford, John M. Powell and James Brown, for the sum of eleven thousand two hundred and fifty dollars and costs of suit, and the said Jacob Thompson, William G. Ford, John M. Powell, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now if the said Thompson, Ford and Powell shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interests and costs, as the said Supreme Court of the United States shall adjudge in the premises, if they, the said Thompson, Ford and Powell, shall fail to make their plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

JACOB THOMPSON, [SEAL.]
By his Atto., WM. F. STEARNS.
WILLIAM G. FORD, [SEAL.]
By his Atto., JNO. W. C. WATSON.
JNO. M. POWELL, [SEAL.]
By his Atto., JNO. W. C. WATSON.
JAMES BROWN, [SEAL.]

Upon said bond are the following endorsements, to wit:—

I, Samuel J. Gholson, Judge of the United States District Court for the Northern District of Mississippi, approve of the within bond and securities.

Given under my hand, this the 14th day of June, A. D. 1859.
S. J. GHOLSON.

Filed in my office, this 11th June, 1859.
R. W. EDMONDSON, Clerk.

Writ of Error is in the words and figures following, to wit:—

(*Writ of Error.*)

United States of America, ss.

The President of the United States, to the Judge of the District Court of the United States for the Northern District of Mississippi, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the said District Court, before you, between Drury W. Bowman, plaintiff, and Jacob Thompson, William G. Ford and John M. Powell, defendants, a manifest error hath hap-

pened, to the great damage of the said Jacob Thompson, William G. Ford and John M. Powell, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States.

Issued the 11th day of June, A. D. 1859.

R. W. EDMONDSON,
Clerk of the District Court of the United States for the Northern Dist. of Missi.

(*Citation.*)

Citation is in the words and figures following, to wit:—

United States of America, ss.

To Drury W. Bowman, or Wm. F. Dowd, Esq., his attorney of record, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the first Monday of in December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Northern District of Mississippi, wherein Jacob Thompson, William G. Ford, and John M. Powell, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, this 11th day of June, in the year of our Lord one thousand eight hundred and fifty-nine, and in the 83d year of the independence of the United States. S. J. GHOLSON.

The United States of America, Northern District of Mississippi.

I, Robert W. Edmondson, Clerk of the District Court of the United States for the Northern District of Mississippi, certify the foregoing seventy-nine pages contain a full, true, complete, and per-

fect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remains of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at office in Pontotoc, this 8th day of October, 1859.

[SEAL.] R. W. EDMONDSON, Clerk.

United States of America, ss.

To Drury W. Bowman, or Wm. F. Dowd, Esq., his attorney of record, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Northern District of Mississippi, wherein Jacob Thompson, William G. Ford, and John M. Powell, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, this 11th day of June, in the year of our Lord one thousand eight hundred and fifty-nine, and in the 83d year of the independence of the United States. S. J. GHOLSON.

Came to, 10th Oct., 1859.

Executed on W. F. Dowd, Esq., the 12th October, 1859.

W. H. H. TISON, Marshal.
By E. W. ROOTES, D. M.

Ex't'g, ent. and ret'g,	2 50
Copy,	50
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	6 00

United States of America, ss.

The President of the United States to the Judge of the District Court of the United States for the Northern District of Mississippi, greeting:—

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between Drury W. Bowman, plaintiff, and Jacob Thompson, William G. Ford, and John M. Powell, defendants, a manifest error hath happened, to the great damage of the said Jacob Thompson, William G. Ford, and John M. Powell, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the

Issued the 11th day of June, A. D. 1859.

R. W. EDMONDSON,
Clerk of the District Court of the United
States for Northern Dist. of Miss.

Filed 12th January, 1860.

Supreme Court of the United States.

DECEMBER TERM, 1867.

JACOB THOMPSON, WILLIAM G. FORD, and JOHN M. POWELL, Plaintiffs in Error.

vs.

DRURY W. BOWMAN.

No. 12.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

J. S. BLACK,
J. HUBLEY ASHTON,
For Plaintiffs in Error.

Medlar & Wannamaker, Printers & Stereotypers, Washington, D.C.

In Supreme Court of United States.

DECEMBER TERM, 1867.

JACOB THOMPSON, WILLIAM G. FORD, and JOHN M. POWELL, plaintiffs in error,
vs.
DRURY W. BOWMAN.
No. 12.

IN ERROR TO THE DISTRICT COURT OF UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

STATEMENT OF THE CASE.

This was an action of assumpsit brought by Drury W. Bowman, defendant in error, against Jacob Thompson, William G. Ford, John M. Powell, Richard E. Orne, and William Griffin and John Griffin, (partners trading as Griffin & Brother,) wherein the declaration counted as follows:

1st. That the defendants, being the owners of certain lands in Mississippi, and being desirous of procuring a purchaser for the same, promised to pay the plaintiff, in consideration that he would introduce them to such purchaser, ten per centum upon the purchase-money of said lands, and that the plaintiff did introduce to the defendants one William G. Lane, who, with one L. M. Wiley and others, purchased the lands on August 4, 1856, for $111,916 66, whereupon the defendants became liable to pay the plaintiff ten per centum upon this sum.

2d. That the defendants requested the plaintiff to find a purchaser for said lands, and promised to pay him ten per centum

upon the amount of the sale of the same, and that he did find such purchaser, who, with others, bought the lands on August 4, 1856, for the amount aforesaid, by means whereof the defendants became liable to pay the plaintiff ten per centum on $111,916 66. (Rec., p. 7.)

The defendants, by attorney, pleaded *non-assumpsit*, and in the issue joined on this plea the jury found for the defendants. (Rec., p. 8.) The plaintiff thereupon moved for a new trial. This motion the court granted and sustained. (Rec. p. 14.) The defendant, Jacob Thompson, before the second trial, on June 7, 1859, moved for leave to file a separate plea of *non-assumpsit*, verified by affidavit, averring that he never was a partner trading in lands with his co-defendants, or either of them. (Rec., p. 15.) In further support of his said motion, Thompson made another affidavit, in which he swore that he left Mississippi in March, 1857; that he resided afterwards in Washington city; that he never was served with process; that he never heard of the suit till July, 1858, when he was on a short visit to Mississippi; that no attorney was authorized to appear for him; that he never was a partner trading in lands with his co-defendants, or any or either of them, but owned an undivided interest in certain lands of which his co-defendants were tenants in common. (Rec., p. 17.)

The court sustained the objections urged by the plaintiff to the motion, on the part of Thompson, for leave to file a separate plea, and refused his application. (Rec. p. 17.)

The second trial resulted in a verdict for the plaintiff for $11,250, upon which the court entered judgment.

The record made under the writ of error presents for the consideration of the court the following

EXCEPTIONS.

First Exception.

This is to the order of the court setting aside the first verdict for the defendants, and granting a new trial. (Rec. p. 15.)

Second Exception.

This exception is to the ruling of the court refusing to grant the defendant Thompson leave to file a separate plea to the plaintiff's declaration. (Rec. p. 17.)

Third Exception.

This exception is to the decision of the court overruling the objection of the defendant Thompson to the admission of the testimony of one James H. Anderson, tending to prove that the defendant Powell, after the lands belonging to the defendants had been all sold, admitted that he, the said Powell, had agreed, prior to the sale, to pay the plaintiff ten per centum upon the proceeds of the sale of the lands, if he, the plaintiff, would find or introduce a purchaser for the same. The defendant's objection was that the sale of all the lands of defendants operated as a dissolution of the alleged partnership, and that, after such dissolution, it was not competent for Powell to make admissions touching the previous transactions of the firm, whereby his former partners might be charged with a liability. (Rec. p. 18.)

Fourth Exception.

This was directed to the decision of the court overruling the defendant's objection to the admission of portions of the deposition of William G. Lane, a witness on behalf of the plaintiff, who swore that Bowman, the plaintiff, introduced him (the witness) to Powell, one of the defendants, at New York, in July, 1856; that he (the witness) introduced Powell to one L. M. Wiley; that Wiley bargained for the land in question, and took the deed in his own name, though he (the witness) had an interest in it, without saying how he got it, or how much he paid, or, indeed, whether he paid anything; that Powell and Wiley negotiated for a week; that Powell asked a dollar or a dollar and a quarter per acre, and finally agreed to sell for seventy-five cents per acre; and that Bowman made no bargain, and did

nothing about the sale except "simply introduce the witness and Powell to one another." (Rec. p. 23.)

Fifth Exception.

This exception is directed to the ruling of the court excluding from the jury, on the objection of the plaintiff, all the testimony of the witness James H. Anderson, on cross-examination by defendants, to the effect that he (the witness) could not recollect all the conversation between Bowman and Powell at the Astor House, in New York, at which the former asked the latter whether he had not promised to give him (Bowman) ten per cent. commissions if he would introduce a purchaser; that he had heard various conversations between the parties, Bowman and Powell, and understood there were to be no commissions unless the land sold for a certain price, which he could not remember; that he could not say whether this was or was not mentioned in the conversation at the Astor House, or in some other conversation; and that he could not say whether he heard it from either of the parties when both were present. (Rec., p. 24.)

Sixth Exception.

This is directed to the charge of the court to the following points:

1. That the jury were to decide according to the preponderance of the evidence, and need not be satisfied beyond a reasonable doubt as to the existence or terms of the contract alleged by the plaintiff.

2. That each partner, within the scope of the partnership, is the agent of all the partners.

3. That each partner may sell, and employ agents to sell, the partnership property, and bargain, on behalf of the firm, for a commission.

4. That the verdict must be for the whole amount claimed or nothing. (Rec., p. 47.)

DEFENDANTS' EVIDENCE.

The evidence adduced by the defendants proved conclusively that the land was purchased by Wiley, without the intervention or aid of Bowman, the plaintiff; that no contract of the kind alleged was made with Bowman by any or either of defendants; that the defendant Powell proposed to Bowman and others, that if a sale could be made above eighty cents per acre, the minimum price, the excess should be divided between Powell and the person effecting the sale; and that the sale was, in fact, made at seventy-five cents per acre, without any aid whatever from Bowman. (Rec., pp. 40–46.)

ARGUMENT.

1. The most important of the foregoing exceptions is the *third*, as it related to the admission of evidence offered by plaintiff, without which the court would have been bound to non-suit him. If that exception is well taken, as we think it is, the judgment must be reversed; and a new trial awarded.

James H. Anderson was called by the plaintiff to prove that *after* the lands belonging to the defendants, in respect of which the supposed partnership existed, and in respect to which the commissions sued for were claimed, had been all sold to Wiley. Powell, one of the defendants, admitted to the plaintiff that he (Powell) had agreed, *prior* to the sale, to pay the plaintiff the amount claimed, if he would find or introduce a purchaser for the lands. This testimony was objected to by Mr. Thompson.

The court overruled the objections, and allowed the testimony of Anderson touching the admissions of Powell, subsequent to the sale, as to the agreement made prior thereto between him and the plaintiff, to go to the jury.

In regard to this evidence, we say:

FIRST. *That, as the lands in question constituted the sole subject-matter of the alleged partnership, the sale of those lands worked a complete termination of it.*

STORY says a partnership may expire "(1,) by the extinction of the thing which constituted the sole subject-matter of the partnership; (2,) by the completion or accomplishment of the entire business for which the partnership was formed. An example of the first kind may easily be suggested by a case where two persons (not being otherwise partners) should jointly buy a ship, to be employed by them for their mutual profit as partners, and the ship should afterwards be totally lost or destroyed. That would constitute a complete termination of the partnership, not merely by operation of law, but as an exact exposition of the actual intendment and understanding of the parties." (Story on Partnership, sec. 280, p. 431.)

The learned author cites the following authorities, among others, in support of this proposition:

3 Kent's Comm., lec. 34, p. 53.
Griswold *vs.* Waddington, 16 John., 491.
Post *vs.* Kimberley, 9 John., 470.
Gow on Partnership, p. 218.
Watson on Partnership, p. 379.

Extincto subjecto, tollitur adjunctum is a maxim of the civil as well as the common law on this subject.

SECOND. *The principle is now settled, by the adjudications of this court as well as of the highest courts of most of the commercial States of the Union, that the acknowledgments, declarations, or statements of a partner, made after the dissolution of the copartnership, respecting the real or supposed transactions, duties, or obligations of the partnership, during its continuance, are not binding as evidence or otherwise upon the other partners who have not assented thereto.*

Such declarations, acts, and acknowledgments have no greater effect than those of any other agent of the partnership made or done after his agency has ceased.

Bell *vs.* Morrison, 1 Peters, 371.
Houser *vs.* Irvine, 3 Walls & Serg., 345.
Coleman *vs.* Fobes, 10 Harris, 156.

Van Keuren *vs.* Parmelee, 2 Comstock, 528.
Winchell *vs.* Hicks, 18 New York, 558.
Shoemaker *vs.* Benedict, 1 Kernan, 176.

The authorities on this subject, in all its relations, are collected and discussed in the following works:

Story on Partnership, sec. 323, p. 489.
3 Kent's Comm., sec. 43, p. 49.
Smith's Leading Cases, vol. i, part ii, p. 896.

2. Without pausing to discuss the merits of the *fourth* exception, we pass to the *fifth*, simply to remark that the exclusion from the jury of all that the witness Anderson said upon his cross-examination by the defendants was an error on the part of the court, for which it would be very difficult to find any justification or excuse. It can only be explained as one of those judicial inadvertencies which sometimes befall judges in the exigencies of a trial at *nisi prius*.

The character of the cross-examination, as indicated in the bill of exceptions, (Rec., p. 24,) sufficiently shows that it was strictly relative to the testimony-in-chief, and that its object was to discover the full extent, import, and effect of the admissions of Powell, and to develop all the circumstances attending the conversations between the plaintiff and Powell to which the witness had testified in his examination-in-chief. The interdiction of such an examination of the principal witness of the plaintiff on the subject of Powell's admissions was grave judicial error, which this court will correct.

1 Greenleaf on Evidence, sec. 201.

3. The charge of the court, on the several points mentioned in the bill of exceptions, was manifestly erroneous. It was predicated upon the theory of the existence of a partnership between the defendants in respect to the lands in question—a theory which finds no support in the evidence contained in this record. The plaintiff gave no testimony whatever proving, or tending in the remotest degree to prove, that the defendants were partners in the ownership of the lands; and yet the court,

without evidence, and against evidence, adopted this hypothesis of partnership relation, and placed the case before the jury simply as one to which the law of partnership was alone applicable. Surely this error, pervading and vitiating the whole charge of the court, should be corrected by the granting of a new trial.

The plaintiff had no case unless the defendants were partners, and the alleged admissions of Powell at the Astor House, after the sale, were admissable evidence against the other defendants. There was no such privity between them on any other view of that relationship, as would render the admissions of one evidence against the others. This fact of partnership, then, was the corner-stone of the plaintiff's case. The plaintiff failed to establish it. The court, when it came to charge the jury, undertook—volunteered, we may say—to supply it, and by a gratuitous and unwarranted assumption, mislead the jury as to the true character and effect of the case, established by the evidence of the plaintiff. We submit the court below should be afforded another opportunity to do justice between the parties.

J. S. BLACK,
J. HUBLEY ASHTON,
For Plaintiff in error.